

Western National has articulated a coverage position under the Policies that is contrary to the terms and conditions of the Policies and there exists a current dispute and controversy as to the interpretation and enforcement of the Policies as to the claims asserted in the Underlying Cause.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction over this dispute including, but not limited to: the dispute involves a dispute arising from an insurance business transaction transacted in Montana; the insured party (ASI Industrial) is located in Yellowstone County; the insurance contract at issue was entered into Yellowstone County, Montana; and a declaratory judgment action is proper under Title 27, Chapter 8, Montana Code Annotated (MCA).

3. Venue for this dispute is appropriate in that the Policies were entered into in Yellowstone County, Montana and the parties are subject to the personal jurisdiction of this Court.

PERSONAL JURISDICTION

PLAINTIFF

4. ASI Industrial is a Montana corporation with a principal place of business at 1300 Minnesota Avenue, Billings, Montana 59101.

DEFENDANT

5. Western National is an insurance company doing business in Yellowstone County, entering into insurance contracts in Yellowstone County, and, according to the National Association of Insurance Commissioners, has a Mailing Address of P.O. Box 1463, a Statutory Home Address and Office Address of 4700 W. 77th Street, Edina, Minnesota 55435. Western National, upon information and belief, is registered to provide insurance in Montana and has a registered agent of C T Corporation System, 3011 American Way. Missoula, Montana 59808.

THE UNDERLYING LAWSUIT

6. In the Underlying Litigation, Plaintiff Southern Minnesota Beet Sugar Cooperative (“SMBSC”) asserts that it entered into an agreement with ASI Industrial for the provision of six sugar storage silos in Renville, Minnesota to be completed in 12 months for an initial contract price in excess of \$13 million (“Design/Build Agreement”). A true and accurate copy of the Complaint filed in the Underlying Cause is attached hereto as Exhibit “3”.

7. SMBSC asserts in the Underlying Cause that ASI Industrial negligently failed to provide sugar storage silos pursuant to the terms of the Design/Build Agreement, to wit: SMBSC asserts that reclaimers in the six silos provided by ASI Industrial were defective, that a reclaimer failed and fell into sugar stored by SMBSC in the silo and that, by and because of the alleged defect(s) and failure(s), that SMBSC was damaged by and through said defect(s) and failure(s).

8. SMBSC asserts in the Underlying Cause that the stored sugar in the silo in which a reclaimer fell was damaged.

9. SMBSC asserts in the Underlying Cause that it then incurred direct damages removing the damage sugar as well as transporting and storing sugar at a remote storage site due to the alleged defective nature of the silo reclaimer(s) provided by ASI Industrial under the Design/Build Agreement.

10. SMBSC asserts in the Underlying Cause that it incurred actual and direct damages in excess of \$2.3 million plus interest and costs (SMBSC’s claims and damages, hereinafter referenced as “SMBSC Claims”).

11. ASI Industrial provided timely notice to Western National of the SMBSC Claims.

12. Western National has acknowledged receipt of ASI Industrial’s notice of covered Property Damage Claim as to both Policies.

COUNT I – COMPLAINT AND REQUEST FOR DECLARATORY RELIEF

13. The parties to this lawsuit dispute the extent to which defense and indemnity coverage exists under the Policies for the SMBSC Claims asserted against ASI Industrial in the Underlying Cause.

14. This action seeks a declaration as to the extent of Western National's obligations to defend and/or indemnify Western National's Insured, ASI Industrial, from the SMBSC Claims asserted in the Underlying Cause.

15. An actual and justiciable controversy exists between ASI Industrial and Western National, to wit: Western National acknowledges the existence of covered Property Damage in the SMBSC Claims, but Western National asserts that it is not required by the Policies, including certain exclusions contained therein, to provide coverage or indemnity for portions of the SMBSC Claims that are consequential and/or have been identified by SMBSC as "cover" direct damages.

16. The damaged sugar in the silo in which the reclaimer fell is covered Property Damage under the Policies.

17. The costs to remove and reclaim the damaged sugar are covered Property Damage under the Policies.

18. SMBSC's alleged loss of use of said silo before the damaged sugar was removed constitutes covered Property Damage under the Policies.

19. If the Court in the Underlying Lawsuit agrees with SMBSC's assertion that the SMBSC Claims include direct damages arising from construction defects that gave rise to covered Property Damage (i.e., alleged damaged sugar), said direct damages also constitute covered Property Damages under the Policies.


20. SMBSC has asserted a claim for covered Property Damage arising from an Occurrence during the Policy Term as those terms are defined by the Policies.

WHEREFORE, Agri-Systems d/b/a ASI Industrial prays for judgment declaring the following:

- A. That the SMBSC Claims in the Underlying Lawsuit are covered by the CGL Policy;
- B. That, to the extent that the damage amount of the SMBSC Claims in the Underlying Lawsuit exceeds the policy limits of the CGL Policy, coverage exists for the excess Property Damage claim amount under the Umbrella Policy;
- C. That Western National has a duty to defend its insured, ASI Industrial, in the Underlying Lawsuit for the entirety of the SMBSC Claim;
- D. That Western National has a duty to indemnify its insured, ASI Industrial, in the Underlying Lawsuit for the entirety of the SMBSC Claim; and
- E. For all other relief as this Court deems just and proper.

Dated this 13th day of March, 2020.

MANION STIGGER, LLP



Andrew J. Manion, MT #51914833

Attorneys for Agri-Systems d/b/a ASI Industrial

MANION STIGGER, LLP
20 N.W. First Street, Suite 200
Evansville, Indiana 47708
Telephone: (812) 425-5200
Facsimile: (812) 425-2464
Email: ajmanion@manionstigger.com

Western National Assurance Company
 9706 4th Avenue NE, Ste 200
 Seattle, WA 98115-2162
 www.wnins.com
 A Stock Company



COMMERCIAL GENERAL LIABILITY COVERAGE PART

Group # 0001029070
 Policy # CPP 1050926 04

Policy Period: From JANUARY 1, 2016 To JANUARY 1, 2017
 12:01 A.M. standard time at the Named Insured's mailing address.



Transaction RENEWAL DECLARATION

Insured Name and Address
 AGRI SYSTEMS
 DBA ASI INDUSTRIAL
 1300 MINNESOTA AVE
 C/O ROBERT HAMLIN
 BILLINGS MT 59101

Agent
 PAYNEWEST INSURANCE INC
 PO BOX 30638
 BILLINGS, MT 59107-0638

09162

Telephone: 406-656-9800

| Business Description | Type of Business | Audit Period | Billing Type |
|------------------------------|---------------------|--------------|--------------|
| MACHINERY & EQUIP INST & SVC | SUBCHAPTER 'S' CORP | ANNUAL | DIRECT |

IN RETURN FOR THE PAYMENT OF THE PREMIUM, AND SUBJECT TO ALL THE TERMS OF THIS POLICY, WE AGREE WITH YOU TO PROVIDE THE INSURANCE AS STATED IN THIS POLICY.

LIMITS OF INSURANCE

| | |
|---|--------------|
| General Aggregate Limit (Other than Products-Completed Operations) | \$ 2,000,000 |
| Products - Completed Operations Aggregate Limit | \$ 2,000,000 |
| Each Occurrence Limit | \$ 1,000,000 |
| Personal and Advertising Injury Limit, any one person or organization | \$ 1,000,000 |
| Medical Expense Limit, any one person | \$ 5,000 |
| Damage to Premises Rented to you, any one premises | \$ 100,000 |

LOCATIONS OF ALL PREMISES YOU OWN, RENT OR OCCUPY

Refer to attached schedule.

CLASSIFICATIONS

Refer to attached schedule.

PREMIUM FOR THIS COVERAGE PART \$ 49,834.00

DISCLOSURE OF PREMIUM:

The portion of your annual premium attributable to coverage for certified acts of terrorism is \$ 200.00

Insurances and Endorsements Applicable to this Policy

See Forms and Endorsements Schedule

Issued Date: 12/31/2015

WN GL 06 07 07

INSURED COPY

EXHIBIT

1

BOOKS

DST 00073390

000020 69/133

Western National Assurance Company
 9706 4th Avenue NE, Ste 200
 Seattle, WA 98115-2162
 www.wnins.com

Policy Number: CPP 1050926 04
 RENEWAL DECLARATION
 Named Insured:
 AGRI SYSTEMS

COMMERCIAL GENERAL LIABILITY EXTENSION OF DECLARATIONS

LOCATION OF PREMISES

Location of All Premises You Own, Rent or Occupy:

001
 1300 MINNESOTA AVE
 BILLINGS MT 59101

002
 2400 OVERLOOK DR
 BILLINGS MT 59101

003
 600 MINNESOTA AVE
 BILLINGS MT 59101

004
 1200 MINNESOTA AVE
 BILLINGS MT 59101

PREMIUM

| Location | Classification | Code No. | Exposure | Premium Base* | Rate Prem.Ops. | Prod/Comp Ops. | Advance Premium Prem/Ops. | Prod/Comp Ops. |
|----------|--|----------|-------------|------------------|-------------------|-------------------|------------------------------|-------------------|
| 001 | | 97222 | \$3,000,000 | P | 5.995 | | \$18,039 | |
| | MACHINERY OR EQUIPMENT-INDUSTRIAL-INSTALLATION, SERVICING OR | | | | | | | |
| 001 | | 91585 | If Any | C | 2.618 | | | |
| | CONTRACTORS-SUB WORK-IN CONNECTION W/ CONSTR OF BLDGS {NOC} | | | | | | | |
| 001 | | 97222 | \$3,000,000 | P | | 10.104 | | \$30,403 |
| | MACHINERY OR EQUIPMENT-INDUSTRIAL-INSTALLATION, SERVICING OR | | | | | | | |
| 001 | | 91585 | If Any | C | | 1.459 | | |
| | CONTRACTORS-SUB WORK-IN CONNECTION W/ CONSTR OF BLDGS {NOC} | | | | | | | |

Extension of Declarations --Total Advance Annual Premium \$48,456

- * - A = Area
- * - C = Total Cost
- * - M = Admissions
- * - O = Total Operating Expenses
- * - P = Payroll
- * - S = Gross Sales
- * - T = See Classification Notes
- * - U = Units

Western National Assurance Company
 9706 4th Avenue NE, Ste 200
 Seattle, WA 98115-2162
 www.wnins.com

Policy Number: CPP 1050926 04
 RENEWAL DECLARATION
 Named Insured:
 AGRI SYSTEMS

COMMERCIAL GENERAL LIABILITY EXTENSION OF DECLARATIONS



LOCATION OF PREMISES

Location of All Premises You Own, Rent or Occupy:

PREMIUM

| Location | Classification | Code No. | Exposure | Premium Base* | Rate Prem.Ops. | Prod/Comp Ops. | Advance Prem/Ops. | Premium Prod/Comp Ops. |
|---|----------------|----------|----------|------------------|-------------------|-------------------|----------------------|------------------------------|
| 003 | | 49451 | 13 | T | 0.861 | INCL | \$11 | INCL |
| VACANT LAND - OTHER THAN NOT-FOR-PROFIT | | | | | | | | |

"Products - completed operations are subject to the General Aggregate Limit"

| | | | | | | | | |
|---|--|-------|---|---|-------|------|-----|------|
| 004 | | 49451 | 4 | T | 0.861 | INCL | \$3 | INCL |
| VACANT LAND - OTHER THAN NOT-FOR-PROFIT | | | | | | | | |

"Products - completed operations are subject to the General Aggregate Limit"

Extension of Declarations --Total Advance Annual Premium \$48,456

- * - A - Area
- * - C - Total Cost
- * - M - Admissions
- * - O - Total Operating Expenses
- * - P - Payroll
- * - S - Gross Sales
- * - T - See Classification Notes
- * - U - Units

Western National Assurance Company
 9706 4th Avenue NE, Ste 200
 Seattle, WA 98115-2162
 www.wnins.com

Policy Number: CPP 1050926 04
 RENEWAL DECLARATION
 Named Insured:
 AGRI SYSTEMS

COMMERCIAL GENERAL LIABILITY CLASSIFICATION SCHEDULE

| Loc | St | Terr | Code | Premium Base | Exposure | Rate | Per | Cov | Premium |
|--|----|------|-------|--------------|----------|------|-----|--------|---------|
| Classification Description | | | | | | | | | |
| 000 | MT | | 44444 | | | | N/A | GLENH | \$178 |
| GENERAL LIABILITY ENHANCEMENT | | | | | | | | | |
| WNGL39 - GENERAL LIABILITY ENHANCEMENT ENDORSEMENT | | | | | | | | | |
| 001 | MT | 001 | 49950 | | | | N/A | ADDINS | \$1,000 |
| ADDL INSURED CLASS CODE | | | | | | | | | |
| WNGL89 - ADDITIONAL INSURED | | | | | | | | | |

Western National Assurance Company
9706 4th Avenue NE, Ste 200
Seattle, WA 98115-2162
www.wnins.com

Policy Number: CPP 1050926 04
RENEWAL DECLARATION
Named Insured:
AGRI SYSTEMS

LOCATION ADDRESS SCHEDULE

Prem # 001
1300 MINNESOTA AVE
BILLINGS, MT 59101

Prem # 002
2400 OVERLOOK DR
BILLINGS, MT 59101

Prem # 003
600 MINNESOTA AVE
BILLINGS, MT 59101

Prem # 004
1200 MINNESOTA AVE
BILLINGS, MT 59101

000020 71/133

000020 71/133

Western National Assurance Company
9706 4th Avenue NE, Ste 200
Seattle, WA 98115-2162
www.wnins.com

Policy Number: CPP 1050926 04
RENEWAL DECLARATION
Named Insured:
AGRI SYSTEMS

SUB-LOCATION ADDRESS SCHEDULE

Prem # 001 Bldg # 001
OFFICE & WHSE - USUAL TO
INDUSTRIAL MACHINERY
CONTRACTOR (WHSE TAKES LGST AREA)

Prem # 001 Bldg # 002
SHOP - USUAL TO INDUSTRIAL
MACHINERY CONTRACTOR

Prem # 001 Bldg # 003
LOWER OPEN FRONT/AUTOMOTIVE

Prem # 001 Bldg # 004
HEX

Prem # 001 Bldg # 005
UPPER OPEN FRONT

Prem # 001 Bldg # 006
BIO PLANT/PAINT BOOTH

Prem # 002 Bldg # 001
AIRPLANE STORAGE HANGAR

Western National Assurance Company
9706 4th Avenue NE, Ste 200
Seattle, WA 98116-2162
www.wnins.com

Policy Number: CPP 1050926 04
RENEWAL DECLARATION
Named Insured:
AGRI SYSTEMS

POLICY INTEREST SCHEDULE



Unit/Loc 0001
CP1218 - LOSS PAYABLE
1ST INTERSTATE BANK BILLINGS
PO BOX 30918
BILLINGS MT 59116-0918

Unit/Loc 0001
CP1218 - LOSS PAYABLE
1ST INTERSTATE BANK BILLINGS
PO BOX 30918
BILLINGS MT 59116-0918

Unit/Loc 0001
CP1218 - LOSS PAYABLE
EGT LLC
101 SW MAIN ST STE 1800
PORTLAND OR

010020 72/133 Unit/Loc 0001
CP1218 - LOSS PAYABLE
EGT LLC
101 SW MAIN ST STE 1800
PORTLAND OR

Unit/Loc 0001
CP1218 - LENDER'S LOSS PAYABLE
EGT LLC
101 SW MAIN ST STE 1800
PORTLAND OR 97204

Western National Assurance Company
 9706 4th Avenue NE, Ste 200
 Seattle, WA 98115-2162
 www.wnins.com

Policy Number: CPP 1050926 04
 RENEWAL DECLARATION
 Named Insured:
 AGRI SYSTEMS

FORMS AND ENDORSEMENTS SCHEDULE

| Coverage Line | Form Number | Ed. Date | Description |
|-------------------|-------------|----------|--------------------------------|
| Commercial Fire | IL0017 | (11/98) | Common Policy Conditions |
| Commercial Fire | IL0167 | (09/08) | Montana Changes - Conformity |
| Commercial Fire | IL0180 | (09/07) | Montana Chg-Conceal/Misrep/Frd |
| Commercial Fire | IL0243 | (09/07) | Montana Changes |
| Commercial Fire | IL0935 | (07/02) | Excl of Certain Computer Relat |
| Commercial Fire | IL0952 | (01/15) | Cap on Losses from CAT |
| Commercial Fire | WNIL09 | (01/02) | Automatic Termination Provisio |
| Commercial Fire | CP0010 | (10/12) | Bldg and Pers Prop Cvg Form |
| Commercial Fire | CP0030 | (10/12) | Business Income Cvg Form (&EE) |
| Commercial Fire | CP0090 | (07/88) | Commercial Property Conditions |
| Commercial Fire | CP0140 | (07/06) | Excl Loss due to Virus or Bact |
| Commercial Fire | CP1030 | (10/12) | Cause of Loss - Special Form |
| Commercial Fire | CP1218 | (10/12) | Loss Payable Provisions |
| Commercial Fire | WNCP01 | (12/14) | Property Enhancement Endt |
| Commercial Fire | WNCP08 | (10/13) | Equipment Breakdown Coverage |
| Commercial Fire | WNCP10 | (10/13) | Equipment Breakdown Schedule |
| Commercial Fire | WNCP17 | (10/13) | MT Amendatory Endorsement |
| General Liability | IL0017 | (11/98) | Common Policy Conditions |
| General Liability | IL0021 | (09/08) | Nuclear Energy Liab Excl Endr |
| General Liability | IL0167 | (09/08) | Montana Changes - Conformity |
| General Liability | IL0243 | (09/07) | Montana Changes |
| General Liability | WNIL09 | (01/02) | Automatic Termination Provisio |
| General Liability | CG0001 | (04/13) | Comm Gen Liab Coverage Form |
| General Liability | CG0300 | (01/96) | Deductible Liability Insurance |
| General Liability | CG2106 | (05/14) | Excl-Access or Disclosure |
| General Liability | CG2116 | (04/13) | Excl-Designated Prof Service |
| General Liability | CG2147 | (12/07) | Excl-Employ.-Related Practices |
| General Liability | CG2149 | (09/99) | Total Pollution Excl Endorse |
| General Liability | CG2160 | (09/98) | Excl-Yr 2000 Computer Rel & Ot |
| General Liability | CG2167 | (12/04) | Fungi or Bacteria Excl. (CGL) |
| General Liability | CG2171 | (01/15) | Excl Oth Acts Terr Outside US |
| General Liability | CG2176 | (01/15) | Excl Punitive Damages |
| General Liability | CG2186 | (12/04) | Excl-Exterior Insul & Fin Sys |
| General Liability | CG2426 | (04/13) | Amendment of Ins. Contract Def |
| General Liability | CG2426 | (07/04) | Amendment of Ins. Contract Def |
| General Liability | CG2431 | (02/14) | MT Changes-Binding Arbitration |
| General Liability | CG2661 | (10/01) | Montana Changes-Medical Paymen |
| General Liability | WNGL02 | (07/10) | Punitive Damages Exclusion |
| General Liability | WNGL10 | (01/04) | Excl-Lead Liability Endt |
| General Liability | WNGL15 | (11/06) | Exclusion-Asbestos |
| General Liability | WNGL21 | (07/14) | Abuse or Molestation Excl |
| General Liability | WNGL39 | (07/15) | Comm Gen Liab Enhancement Endt |
| General Liability | WNGL89 | (07/15) | Addl Insd-Contr Ops-Compl Ops |

000020 73/133

DST 00073330

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

QUICK REFERENCE

READ YOUR POLICY CAREFULLY

The Commercial General Liability Coverage part in your policy consists of Declarations, a Commercial General Liability Coverage Form (CG 00 01), Common Policy Conditions and Endorsements, if applicable. Following is a Quick Reference indexing of the principal provisions contained in each of the components making up the Coverage Part, listed in sequential order.

DECLARATIONS

Named Insured And Mailing Address
Policy Period
Coverages And Limits Of Insurance
Forms And Endorsements Applying To The Coverage Part At The Time Of Issue

COVERAGE FORM (CG 00 01)

SECTION I - COVERAGES

Coverage A - Bodily Injury And Property Damage Liability
Insuring Agreement
Exclusions
Coverage B - Personal And Advertising Injury Liability
Insuring Agreement
Exclusions
Coverage C - Medical Payments
Insuring Agreement
Exclusions
Supplementary Payments - Coverages A and B

SECTION II - WHO IS AN INSURED

SECTION III - LIMITS OF INSURANCE

SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS

Bankruptcy
Duties In The Event Of Occurrence, Offense, Claim Or Suit
Legal Action Against Us
Other Insurance
Premium Audit
Representations
Separations Of Insureds
Transfer Of Rights Of Recovery Against Others To Us
When We Do Not Renew

SECTION V - DEFINITIONS

COMMON POLICY CONDITIONS

- A. Cancellation
- B. Changes
- C. Examinations Of Your Books And Records
- D. Inspections And Surveys
- E. Premiums
- F. Transfer Of Your Rights And Duties Under This Policy

ENDORSEMENTS (If Any)

IMPORTANT: This Quick Reference is not part of your Commercial General Liability Policy and does not provide coverage. Refer to your Commercial General Liability Policy for actual contractual provisions.

COMMERCIAL GENERAL LIABILITY
CG 00 01 04 13

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured under this policy. The words "we", "us" and "our" refer to the company providing this insurance.

The word "insured" means any person or organization qualifying as such under Section II - Who Is An Insured.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section V - Definitions.

SECTION I - COVERAGES

COVERAGE A - BODILY INJURY AND PROPERTY DAMAGE LIABILITY

1. Insuring Agreement

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. We may, at our discretion, investigate any "occurrence" and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section III - Limits Of Insurance; and
- (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments - Coverages A and B.

- b. This insurance applies to "bodily injury" and "property damage" only if:

- (1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";

- (2) The "bodily injury" or "property damage" occurs during the policy period; and

- (3) Prior to the policy period, no insured listed under Paragraph 1. of Section II - Who Is An Insured and no "employee" authorized by you to give or receive notice of an "occurrence" or claim, knew that the "bodily injury" or "property damage" had occurred, in whole or in part. If such a listed insured or authorized "employee" knew, prior to the policy period, that the "bodily injury" or "property damage" occurred, then any continuation, change or resumption of such "bodily injury" or "property damage" during or after the policy period will be deemed to have been known prior to the policy period.

- c. "Bodily injury" or "property damage" which occurs during the policy period and was not, prior to the policy period, known to have occurred by any insured listed under Paragraph 1. of Section II - Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim, includes any continuation, change or resumption of that "bodily injury" or "property damage" after the end of the policy period.

- d. "Bodily injury" or "property damage" will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph 1. of Section II - Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim:

- (1) Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;

- (2) Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage"; or

- (3) Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.

- e. Damages because of "bodily injury" include damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily

CG0020 79/133

DST 00073360

injury".

2. Exclusions

This insurance does not apply to:

a. Expected Or Intended Injury

"Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" resulting from the use of reasonable force to protect persons or property.

b. Contractual Liability

"Bodily injury" or "property damage" for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:

- (1) That the insured would have in the absence of the contract or agreement; or
- (2) Assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement. Solely for the purposes of liability assumed in an "insured contract", reasonable attorneys' fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of "bodily injury" or "property damage", provided:
 - (a) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same "insured contract"; and
 - (b) Such attorneys' fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

c. Liquor Liability

"Bodily injury" or "property damage" for which any insured may be held liable by reason of:

- (1) Causing or contributing to the intoxication of any person;
- (2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
- (3) Any statute, ordinance or regulation relating to the sale, gift, distribution or

use of alcoholic beverages.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in:

- (a) The supervision, hiring, employment, training or monitoring of others by that insured; or
- (b) Providing or failing to provide transportation with respect to any person that may be under the influence of alcohol;

if the "occurrence" which caused the "bodily injury" or "property damage", involved that which is described in Paragraph (1), (2) or (3) above.

However, this exclusion applies only if you are in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages. For the purposes of this exclusion, permitting a person to bring alcoholic beverages on your premises, for consumption on your premises, whether or not a fee is charged or a license is required for such activity, is not by itself considered the business of selling, serving or furnishing alcoholic beverages.

d. Workers' Compensation And Similar Laws

Any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

e. Employer's Liability

"Bodily injury" to:

- (1) An "employee" of the insured arising out of and in the course of:
 - (a) Employment by the insured; or
 - (b) Performing duties related to the conduct of the insured's business; or
- (2) The spouse, child, parent, brother or sister of that "employee" as a consequence of Paragraph (1) above.

This exclusion applies whether the insured may be liable as an employer or in any other capacity and to any obligation to share damages with or repay someone else who must pay damages because of the injury.

This exclusion does not apply to liability assumed by the insured under an "insured

contract".

f. Pollution

(1) "Bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":

(a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any insured. However, this subparagraph does not apply to:

(i) "Bodily injury" if sustained within a building and caused by smoke, fumes, vapor or soot produced by or originating from equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use, by the building's occupants or their guests;

(ii) "Bodily injury" or "property damage" for which you may be held liable, if you are a contractor and the owner or lessee of such premises, site or location has been added to your policy as an additional insured with respect to your ongoing operations performed for that additional insured at that premises, site or location and such premises, site or location is not and never was owned or occupied by, or rented or loaned to, any insured, other than that additional insured; or

(iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire";

(b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;

(c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for:

(i) Any insured; or

(ii) Any person or organization for whom you may be legally re-

sponsible; or

(d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the "pollutants" are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor. However, this subparagraph does not apply to:

(i) "Bodily injury" or "property damage" arising out of the escape of fuels, lubricants or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of "mobile equipment" or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the "bodily injury" or "property damage" arises out of the intentional discharge, dispersal or release of the fuels, lubricants or other operating fluids, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent that they be discharged, dispersed or released as part of the operations being performed by such insured, contractor or subcontractor;

(ii) "Bodily injury" or "property damage" sustained within a building and caused by the release of gases, fumes or vapors from materials brought into that building in connection with operations being performed by you or on your behalf by a contractor or subcontractor; or

(iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire".

(e) At or from any premises, site or location on which any insured or any contractors or subcontractors

000020 00/133

DST 00073390

working directly or indirectly on any insured's behalf are performing operations if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants".

(2) Any loss, cost or expense arising out of any:

(a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or

(b) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

However, this paragraph does not apply to liability for damages because of "property damage" that the insured would have in the absence of such request, demand, order or statutory or regulatory requirement, or such claim or "suit" by or on behalf of a governmental authority.

g. Aircraft, Auto Or Watercraft

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft owned or operated by or rented or loaned to any insured. Use includes operation and "loading or unloading".

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft that is owned or operated by or rented or loaned to any insured.

This exclusion does not apply to:

(1) A watercraft while ashore on premises you own or rent;

(2) A watercraft you do not own that is:

(a) Less than 26 feet long; and

(b) Not being used to carry persons or property for a charge;

(3) Parking an "auto" on, or on the ways next to, premises you own or rent, provided the "auto" is not owned by or rented or loaned to you or the insured;

(4) Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft; or

(5) "Bodily injury" or "property damage" arising out of:

(a) The operation of machinery or equipment that is attached to, or part of, a land vehicle that would qualify under the definition of "mobile equipment" if it were not subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged; or

(b) The operation of any of the machinery or equipment listed in Paragraph f.(2) or f.(3) of the definition of "mobile equipment".

h. Mobile Equipment

"Bodily injury" or "property damage" arising out of:

(1) The transportation of "mobile equipment" by an "auto" owned or operated by or rented or loaned to any insured; or

(2) The use of "mobile equipment" in, or while in practice for, or while being prepared for, any prearranged racing, speed, demolition, or stunting activity.

i. War

"Bodily injury" or "property damage", however caused, arising, directly or indirectly, out of:

(1) War, including undeclared or civil war;

(2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or

(3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or

defending against any of these.

j. Damage To Property

"Property damage" to:

- (1) Property you own, rent, or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;
- (2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;
- (3) Property loaned to you;
- (4) Personal property in the care, custody or control of the insured;
- (5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or
- (6) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

Paragraphs (1), (3) and (4) of this exclusion do not apply to "property damage" (other than damage by fire) to premises, including the contents of such premises, rented to you for a period of seven or fewer consecutive days. A separate limit of insurance applies to Damage To Premises Rented To You as described in Section III – Limits Of Insurance.

Paragraph (2) of this exclusion does not apply if the premises are "your work" and were never occupied, rented or held for rental by you.

Paragraphs (3), (4), (5) and (6) of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraph (6) of this exclusion does not apply to "property damage" included in the "products-completed operations hazard".

k. Damage To Your Product

"Property damage" to "your product" arising out of it or any part of it.

l. Damage To Your Work

"Property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations haz-

ard".

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

m. Damage To Impaired Property Or Property Not Physically Injured

"Property damage" to "impaired property" or property that has not been physically injured, arising out of:

- (1) A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or
- (2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to "your product" or "your work" after it has been put to its intended use.

n. Recall Of Products, Work Or Impaired Property

Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

- (1) "Your product";
- (2) "Your work"; or
- (3) "Impaired property";

If such product, work, or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

o. Personal And Advertising Injury

"Bodily injury" arising out of "personal and advertising injury".

p. Electronic Data

Damages arising out of the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate electronic data.

However, this exclusion does not apply to liability for damages because of "bodily injury".

As used in this exclusion, electronic data means information, facts or programs stored as or on, created or used on, or

000020 81/133

DST 00073390

transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

q. **Recording And Distribution Of Material Or Information In Violation Of Law**

"Bodily injury" or "property damage" arising directly or indirectly out of any action or omission that violates or is alleged to violate:

- (1) The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law;
- (2) The CAN-SPAM Act of 2003, including any amendment of or addition to such law;
- (3) The Fair Credit Reporting Act (FCRA), and any amendment of or addition to such law, including the Fair and Accurate Credit Transactions Act (FACTA); or
- (4) Any federal, state or local statute, ordinance or regulation, other than the TCPA, CAN-SPAM Act of 2003 or FCRA and their amendments and additions, that addresses, prohibits, or limits the printing, dissemination, disposal, collecting, recording, sending, transmitting, communicating or distribution of material or information.

Exclusions c. through n. do not apply to damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner. A separate limit of insurance applies to this coverage as described in Section III - Limits Of Insurance.

COVERAGE B - PERSONAL AND ADVERTISING INJURY LIABILITY

1. Insuring Agreement

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "personal and advertising injury" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "personal and advertising injury" to which this insurance does not apply. We may, at our discretion, investigate any offense and settle any claim or "suit" that may result. But;

- (1) The amount we will pay for damages is limited as described in Section III -

Limits Of Insurance; and

- (2) Our right and duty to defend and when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments - Coverages A and B.

- b. This insurance applies to "personal and advertising injury" caused by an offense arising out of your business but only if the offense was committed in the "coverage territory" during the policy period.

2. Exclusions

This insurance does not apply to:

a. Knowing Violation Of Rights Of Another

"Personal and advertising injury" caused by or at the direction of the insured with the knowledge that the act would violate the rights of another and would inflict "personal and advertising injury".

b. Material Published With Knowledge Of Falsity

"Personal and advertising injury" arising out of oral or written publication, in any manner, of material, if done by or at the direction of the insured with knowledge of its falsity.

c. Material Published Prior To Policy Period

"Personal and advertising injury" arising out of oral or written publication, in any manner, of material whose first publication took place before the beginning of the policy period.

d. Criminal Acts

"Personal and advertising injury" arising out of a criminal act committed by or at the direction of the insured.

e. Contractual Liability

"Personal and advertising injury" for which the insured has assumed liability in a contract or agreement. This exclusion does not apply to liability for damages that the insured would have in the absence of the contract or agreement.

f. Breach Of Contract

"Personal and advertising injury" arising out of a breach of contract, except an implied contract to use another's advertising idea in your "advertisement".

g. Quality Or Performance Of Goods – Failure To Conform To Statements

"Personal and advertising injury" arising out of the failure of goods, products or services to conform with any statement of quality or performance made in your "advertisement".

h. Wrong Description Of Prices

"Personal and advertising injury" arising out of the wrong description of the price of goods, products or services stated in your "advertisement".

i. Infringement Of Copyright, Patent, Trade-mark Or Trade Secret

"Personal and advertising injury" arising out of the infringement of copyright, patent, trademark, trade secret or other intellectual property rights. Under this exclusion, such other intellectual property rights do not include the use of another's advertising idea in your "advertisement".

However, this exclusion does not apply to infringement, in your "advertisement", of copyright, trade dress or slogan.

j. Insureds In Media And Internet Type Businesses

"Personal and advertising injury" committed by an insured whose business is:

- (1) Advertising, broadcasting, publishing or telecasting;
- (2) Designing or determining content of web sites for others; or
- (3) An Internet search, access, content or service provider.

However, this exclusion does not apply to Paragraphs 14.a., b. and c. of "personal and advertising injury" under the Definitions section.

For the purposes of this exclusion, the placing of frames, borders or links, or advertising, for you or others anywhere on the Internet, is not by itself, considered the business of advertising, broadcasting, publishing or telecasting.

k. Electronic Chatrooms Or Bulletin Boards

"Personal and advertising injury" arising out of an electronic chatroom or bulletin board the insured hosts, owns, or over which the insured exercises control.

l. Unauthorized Use Of Another's Name Or Product

"Personal and advertising injury" arising out of the unauthorized use of another's

name or product in your e-mail address, domain name or metatag, or any other similar tactics to mislead another's potential customers.

m. Pollution

"Personal and advertising injury" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" at any time.

n. Pollution-related

Any loss, cost or expense arising out of any:

- (1) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
- (2) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

o. War

"Personal and advertising injury", however caused, arising, directly or indirectly, out of:

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

p. Recording And Distribution Of Material Or Information In Violation Of Law

"Personal and advertising injury" arising directly or indirectly out of any action or omission that violates or is alleged to violate:

- (1) The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law;
- (2) The CAN-SPAM Act of 2003, including any amendment of or addition to such law;

000020 82/133

DST 00073390

- (3) The Fair Credit Reporting Act (FCRA), and any amendment of or addition to such law, including the Fair and Accurate Credit Transactions Act (FACTA); or
- (4) Any federal, state or local statute, ordinance or regulation, other than the TCPA, CAN-SPAM Act of 2003 or FCRA and their amendments and additions, that addresses, prohibits, or limits the printing, dissemination, disposal, collecting, recording, sending, transmitting, communicating or distribution of material or information.

COVERAGE C – MEDICAL PAYMENTS

1. Insuring Agreement

- a. We will pay medical expenses as described below for "bodily injury" caused by an accident:
 - (1) On premises you own or rent;
 - (2) On ways next to premises you own or rent; or
 - (3) Because of your operations;
 provided that:
 - (a) The accident takes place in the "coverage territory" and during the policy period;
 - (b) The expenses are incurred and reported to us within one year of the date of the accident; and
 - (c) The injured person submits to examination, at our expense, by physicians of our choice as often as we reasonably require.
- b. We will make these payments regardless of fault. These payments will not exceed the applicable limit of insurance. We will pay reasonable expenses for:
 - (1) First aid administered at the time of an accident;
 - (2) Necessary medical, surgical, X-ray and dental services, including prosthetic devices; and
 - (3) Necessary ambulance, hospital, professional nursing and funeral services.

2. Exclusions

We will not pay expenses for "bodily injury":

a. Any Insured

To any insured, except "volunteer workers".

b. Hired Person

To a person hired to do work for or on behalf of any insured or a tenant of any insured.

c. Injury On Normally Occupied Premises

To a person injured on that part of premises you own or rent that the person normally occupies.

d. Workers' Compensation And Similar Laws

To a person, whether or not an "employee" of any insured, if benefits for the "bodily injury" are payable or must be provided under a workers' compensation or disability benefits law or a similar law.

e. Athletics Activities

To a person injured while practicing, instructing or participating in any physical exercises or games, sports, or athletic contests.

f. Products-Completed Operations Hazard

Included within the "products-completed operations hazard".

g. Coverage A Exclusions

Excluded under Coverage A.

SUPPLEMENTARY PAYMENTS – COVERAGES A AND B

- 1. We will pay, with respect to any claim we investigate or settle, or any "suit" against an insured we defend:
 - a. All expenses we incur.
 - b. Up to \$250 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.
 - c. The cost of bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.
 - d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$250 a day because of time off from work.
 - e. All court costs taxed against the insured in the "suit". However, these payments do not include attorneys' fees or attorneys'

expenses taxed against the insured.

- f. Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.
- g. All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.

These payments will not reduce the limits of insurance.

2. If we defend an insured against a "suit" and an indemnitee of the insured is also named as a party to the "suit", we will defend that indemnitee if all of the following conditions are met:

- a. The "suit" against the indemnitee seeks damages for which the insured has assumed the liability of the indemnitee in a contract or agreement that is an "insured contract";
- b. This insurance applies to such liability assumed by the insured;
- c. The obligation to defend, or the cost of the defense of, that indemnitee, has also been assumed by the insured in the same "insured contract";
- d. The allegations in the "suit" and the information we know about the "occurrence" are such that no conflict appears to exist between the interests of the insured and the interests of the indemnitee;
- e. The indemnitee and the insured ask us to conduct and control the defense of that indemnitee against such "suit" and agree that we can assign the same counsel to defend the insured and the indemnitee; and
- f. The indemnitee:

- (1) Agrees in writing to:

- (a) Cooperate with us in the investigation, settlement or defense of the "suit";
- (b) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "suit";
- (c) Notify any other insurer whose coverage is available to the indemnitee; and
- (d) Cooperate with us with respect to coordinating other applicable insur-

ance available to the indemnitee; and

- (2) Provides us with written authorization to:

- (a) Obtain records and other information related to the "suit"; and
- (b) Conduct and control the defense of the indemnitee in such "suit".

So long as the above conditions are met, attorneys' fees incurred by us in the defense of that indemnitee, necessary litigation expenses incurred by us and necessary litigation expenses incurred by the indemnitee at our request will be paid as Supplementary Payments. Notwithstanding the provisions of Paragraph 2.b.(2) of Section I - Coverage A - Bodily Injury And Property Damage Liability, such payments will not be deemed to be damages for "bodily injury" and "property damage" and will not reduce the limits of insurance.

Our obligation to defend an insured's indemnitee and to pay for attorneys' fees and necessary litigation expenses as Supplementary Payments ends when we have used up the applicable limit of insurance in the payment of judgments or settlements or the conditions set forth above, or the terms of the agreement described in Paragraph f. above, are no longer met.

SECTION II - WHO IS AN INSURED

1. If you are designated in the Declarations as:

- a. An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
- b. A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.
- c. A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
- d. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.
- e. A trust, you are an insured. Your trustees

000020 83/133

DST 00073390

are also insureds, but only with respect to their duties as trustees.

2. Each of the following is also an insured:

- a. Your "volunteer workers" only while performing duties related to the conduct of your business, or your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business. However, none of these "employees" or "volunteer workers" are insureds for:

(1) "Bodily injury" or "personal and advertising injury":

- (a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;

- (b) To the spouse, child, parent, brother or sister of that co-"employee" or "volunteer worker" as a consequence of Paragraph (1)(a) above;

- (c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraph (1)(a) or (b) above; or

- (d) Arising out of his or her providing or failing to provide professional health care services.

(2) "Property damage" to property:

- (a) Owned, occupied or used by;
- (b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by;

you, any of your "employees", "volunteer workers", any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).

- b. Any person (other than your "employee" or

"volunteer worker"), or any organization while acting as your real estate manager.

- c. Any person or organization having proper temporary custody of your property if you die, but only:

(1) With respect to liability arising out of the maintenance or use of that property; and

(2) Until your legal representative has been appointed.

- d. Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this Coverage Part.

3. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:

- a. Coverage under this provision is afforded only until the 90th day after you acquire or form the organization or the end of the policy period, whichever is earlier;

- b. Coverage A does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and

- c. Coverage B does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

SECTION III - LIMITS OF INSURANCE

1. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:

- a. Insureds;
- b. Claims made or "suits" brought; or
- c. Persons or organizations making claims or bringing "suits".

2. The General Aggregate Limit is the most we will pay for the sum of:

- a. Medical expenses under Coverage C;
- b. Damages under Coverage A, except damages because of "bodily injury" or "property damage" included in the "products-

completed operations hazard"; and

- c. Damages under Coverage B.
- 3. The Products-Completed Operations Aggregate Limit is the most we will pay under Coverage A for damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard".
- 4. Subject to Paragraph 2. above, the Personal And Advertising Injury Limit is the most we will pay under Coverage B for the sum of all damages because of all "personal and advertising injury" sustained by any one person or organization.
- 5. Subject to Paragraph 2. or 3. above, whichever applies, the Each Occurrence Limit is the most we will pay for the sum of:
 - a. Damages under Coverage A; and
 - b. Medical expenses under Coverage C because of all "bodily injury" and "property damage" arising out of any one "occurrence".
- 6. Subject to Paragraph 5. above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage A for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, while rented to you or temporarily occupied by you with permission of the owner.
- 7. Subject to Paragraph 5. above, the Medical Expense Limit is the most we will pay under Coverage C for all medical expenses because of "bodily injury" sustained by any one person.

The Limits of Insurance of this Coverage Part apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS

1. Bankruptcy

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Coverage Part.

2. Duties In The Event Of Occurrence, Offense, Claim Or Suit

- a. You must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:

- (1) How, when and where the "occurrence" or offense took place;
- (2) The names and addresses of any injured persons and witnesses; and
- (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.

- b. If a claim is made or "suit" is brought against any insured, you must:

- (1) Immediately record the specifics of the claim or "suit" and the date received; and
- (2) Notify us as soon as practicable.

You must see to it that we receive written notice of the claim or "suit" as soon as practicable.

- c. You and any other involved insured must:

- (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
- (2) Authorize us to obtain records and other information;
- (3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and
- (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this insurance may also apply.

- d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

3. Legal Action Against Us

No person or organization has a right under this Coverage Part:

- a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or
- b. To sue us on this Coverage Part unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of this Coverage Part or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of

000020 84/133

DST 00073399

liability signed by us, the insured and the claimant or the claimant's legal representative.

4. Other Insurance

If other valid and collectible insurance is available to the insured for a loss we cover under Coverages A or B of this Coverage Part, our obligations are limited as follows:

a. Primary Insurance

This insurance is primary except when Paragraph b. below applies. If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in Paragraph c. below.

b. Excess Insurance

(1) This insurance is excess over:

(a) Any of the other insurance, whether primary, excess, contingent or on any other basis;

(i) That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";

(ii) That is Fire insurance for premises rented to you or temporarily occupied by you with permission of the owner;

(iii) That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises rented to you or temporarily occupied by you with permission of the owner; or

(iv) If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion g. of Section I - Coverage A - Bodily Injury And Property Damage Liability.

(b) Any other primary insurance available to you covering liability for damages arising out of the premises or operations, or the products and completed operations, for which you have been added as an additional insured.

(2) When this insurance is excess, we will have no duty under Coverages A or B to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be

entitled to the insured's rights against all those other insurers.

(3) When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

(a) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and

(b) The total of all deductible and self-insured amounts under all that other insurance.

(4) We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

c. Method Of Sharing

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

5. Premium Audit

a. We will compute all premiums for this Coverage Part in accordance with our rules and rates.

b. Premium shown in this Coverage Part as advance premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period and send notice to the first Named Insured. The due date for audit and retrospective premiums is the date shown as the due date on the bill. If the sum of the advance and audit premiums paid for the policy period is greater than the earned premium, we will return the excess to the first Named Insured.

c. The first Named Insured must keep records of the information we need for premium

computation, and send us copies at such times as we may request.

6. Representations

By accepting this policy, you agree:

- a. The statements in the Declarations are accurate and complete;
- b. Those statements are based upon representations you made to us; and
- c. We have issued this policy in reliance upon your representations.

7. Separation Of Insureds

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part to the first Named Insured, this insurance applies:

- a. As if each Named Insured were the only Named Insured; and
- b. Separately to each insured against whom claim is made or "suit" is brought.

8. Transfer Of Rights Of Recovery Against Others To Us

If the insured has rights to recover all or part of any payment we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.

9. When We Do Not Renew

If we decide not to renew this Coverage Part, we will mail or deliver to the first Named Insured shown in the Declarations written notice of the nonrenewal not less than 30 days before the expiration date.

If notice is mailed, proof of mailing will be sufficient proof of notice.

SECTION V - DEFINITIONS

1. "Advertisement" means a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters. For the purposes of this definition:

- a. Notices that are published include material placed on the Internet or on similar electronic means of communication; and
- b. Regarding web sites, only that part of a web site that is about your goods, products or services for the purposes of attracting customers or supporters is considered an advertisement.

2. "Auto" means:

- a. A land motor vehicle, trailer or semitrailer designed for travel on public roads, in-

cluding any attached machinery or equipment; or

- b. Any other land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged.

However, "auto" does not include "mobile equipment".

3. "Bodily injury" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.

4. "Coverage territory" means:

- a. The United States of America (including its territories and possessions), Puerto Rico and Canada;
- b. International waters or airspace, but only if the injury or damage occurs in the course of travel or transportation between any places included in Paragraph a. above; or
- c. All other parts of the world if the injury or damage arises out of:

- (1) Goods or products made or sold by you in the territory described in Paragraph a. above;
- (2) The activities of a person whose home is in the territory described in Paragraph a. above, but is away for a short time on your business; or
- (3) "Personal and advertising injury" offenses that take place through the Internet or similar electronic means of communication;

provided the insured's responsibility to pay damages is determined in a "suit" on the merits, in the territory described in Paragraph a. above or in a settlement we agree to.

5. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".
6. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, bylaws or any other similar governing document.
7. "Hostile fire" means one which becomes uncontrollable or breaks out from where it was intended to be.
8. "Impaired property" means tangible property, other than "your product" or "your work", that cannot be used or is less useful because:
 - a. It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or

000020 85/133

EST 00073390

- b. You have failed to fulfill the terms of a contract or agreement;

if such property can be restored to use by the repair, replacement, adjustment or removal of "your product" or "your work" or your fulfilling the terms of the contract or agreement.

9. "Insured contract" means:

- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";
- b. A sidetrack agreement;
- c. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
- d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
- e. An elevator maintenance agreement;
- f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph f. does not include that part of any contract or agreement:

- (1) That indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass or crossing;
- (2) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
 - (a) Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
 - (b) Giving directions or instructions, or

failing to give them, if that is the primary cause of the injury or damage; or

- (3) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in (2) above and supervisory, inspection, architectural or engineering activities.

10. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".

11. "Loading or unloading" means the handling of property:

- a. After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or "auto";
- b. While it is in or on an aircraft, watercraft or "auto"; or
- c. While it is being moved from an aircraft, watercraft or "auto" to the place where it is finally delivered;

but "loading or unloading" does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft or "auto".

12. "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:

- a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
- b. Vehicles maintained for use solely on or next to premises you own or rent;
- c. Vehicles that travel on crawler treads;
- d. Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
 - (1) Power cranes, shovels, loaders, diggers or drills; or
 - (2) Road construction or resurfacing equipment such as graders, scrapers or rollers;
- e. Vehicles not described in Paragraph a., b., c. or d. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equip-

ment of the following types:

- (1) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
- (2) Cherry pickers and similar devices used to raise or lower workers;
- f. Vehicles not described in Paragraph a., b., c. or d. above maintained primarily for purposes other than the transportation of persons or cargo.

However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":

- (1) Equipment designed primarily for:
 - (a) Snow removal;
 - (b) Road maintenance, but not construction or resurfacing; or
 - (c) Street cleaning;
- (2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
- (3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

However, "mobile equipment" does not include any land vehicles that are subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged. Land vehicles subject to a compulsory or financial responsibility law or other motor vehicle insurance law are considered "autos".

13. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.
14. "Personal and advertising injury" means injury, including consequential "bodily injury", arising out of one or more of the following offenses:
 - a. False arrest, detention or imprisonment;
 - b. Malicious prosecution;
 - c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;
 - d. Oral or written publication, in any manner,

of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;

- e. Oral or written publication, in any manner, of material that violates a person's right of privacy;
- f. The use of another's advertising idea in your "advertisement"; or
- g. Infringing upon another's copyright, trade dress or slogan in your "advertisement".
15. "Pollutants" mean any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.
16. "Products-completed operations hazard":
 - a. Includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:
 - (1) Products that are still in your physical possession; or
 - (2) Work that has not yet been completed or abandoned. However, "your work" will be deemed completed at the earliest of the following times:
 - (a) When all of the work called for in your contract has been completed.
 - (b) When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site.
 - (c) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

- b. Does not include "bodily injury" or "property damage" arising out of:
 - (1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the "loading or unloading" of that vehicle by any insured;
 - (2) The existence of tools, uninstalled equipment or abandoned or unused materials; or
 - (3) Products or operations for which the

000020 86/133

DST 00073330

classification, listed in the Declarations or in a policy Schedule, states that products-completed operations are subject to the General Aggregate Limit.

17. "Property damage" means:

- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
- b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it.

For the purposes of this insurance, electronic data is not tangible property.

As used in this definition, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

18. "Suit" means a civil proceeding in which damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies are alleged. "Suit" includes:

- a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or
- b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.

19. "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.

20. "Volunteer worker" means a person who is not your "employee", and who donates his or her work and acts at the direction of and within

the scope of duties determined by you, and is not paid a fee, salary or other compensation by you or anyone else for their work performed for you.

21. "Your product":

a. Means:

- (1) Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:

- (a) You;
- (b) Others trading under your name; or
- (c) A person or organization whose business or assets you have acquired; and

- (2) Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.

b. Includes:

- (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your product"; and
- (2) The providing of or failure to provide warnings or instructions.

- c. Does not include vending machines or other property rented to or located for the use of others but not sold.

22. "Your work":

a. Means:

- (1) Work or operations performed by you or on your behalf; and
- (2) Materials, parts or equipment furnished in connection with such work or operations.

b. Includes:

- (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your work"; and
- (2) The providing of or failure to provide warnings or instructions.

POLICY NUMBER: CPP 1050926 04

COMMERCIAL GENERAL LIABILITY
CG 03 00 01 96

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

DEDUCTIBLE LIABILITY INSURANCE

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

| Coverage | SCHEDULE | |
|--|---|------------------------------|
| | Amount and Basis of Deductible PER CLAIM or PER OCCURRENCE | |
| Bodily Injury Liability | \$ | \$ |
| OR | | |
| Property Damage Liability | \$ | \$ 2,000 Premises/Operations |
| OR | | |
| Bodily Injury Liability and/or Property Damage Liability Combined | \$ | \$ |

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

APPLICATION OF ENDORSEMENT (Enter below any limitations on the application of this endorsement. If no limitation is entered, the deductibles apply to damages for all "bodily injury" and "property damage", however caused):

- A. Our obligation under the Bodily Injury Liability and Property Damage Liability Coverages to pay damages on your behalf applies only to the amount of damages in excess of any deductible amounts stated in the Schedule above as applicable to such coverages.
- B. You may select a deductible amount on either a per claim or a per "occurrence" basis. Your selected deductible applies to the coverage option and to the basis of the deductible indicated by the placement of the deductible amount in the Schedule above. The deductible amount stated in the Schedule above applies as follows:
1. **PER CLAIM BASIS.** If the deductible amount indicated in the Schedule above is on a per claim basis, that deductible applies as follows:
 - a. Under Bodily Injury Liability Coverage, to all damages sustained by any one person because of "bodily injury";
 - b. Under Property Damage Liability Coverage, to all damages sustained by any one person because of "property damage"; or
 - c. Under Bodily Injury Liability and/or Property Damage Liability Coverage Combined, to all damages sustained by any one person because of:
 - (1) "Bodily injury";
 - (2) "Property damage"; or
 - (3) "Bodily injury" and "property damage" combined
- as the result of any one "occurrence".
- If damages are claimed for care, loss of services or death resulting at any time from "bodily injury", a separate deductible amount will be applied to each person making a claim for such damages.
- With respect to "property damage", person includes an organization.

2. **PER OCCURRENCE BASIS.** If the deductible amount indicated in the Schedule above is on a "per occurrence" basis, that deductible amount applies as follows:
- a. Under Bodily Injury Liability Coverage, to all damages because of "bodily injury";
 - b. Under Property Damage Liability Coverage, to all damages because of "property damage"; or
 - c. Under Bodily Injury Liability and/or Property Damage Liability Coverage Combined, to all damages because of:
 - (1) "Bodily injury";
 - (2) "Property damage"; or
 - (3) "Bodily injury" and "property damage" combinedas the result of any one "occurrence", regardless of the number of persons or organizations who sustain damages because of that "occurrence."
- C. The terms of this insurance, including those with respect to:
- 1. Our right and duty to defend the insured against any "suits" seeking those damages; and
 - 2. Your duties in the event of an "occurrence", claim, or "suit"
- apply irrespective of the application of the deductible amount.
- D. We may pay any part or all of the deductible amount to effect settlement of any claim or "suit" and, upon notification of the action taken, you shall promptly reimburse us for such part of the deductible amount as has been paid by us.

POLICY NUMBER: CPP 1050926 04

COMMERCIAL GENERAL LIABILITY
CG 03 00 01 96

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

DEDUCTIBLE LIABILITY INSURANCE

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

| Coverage | SCHEDULE | |
|--|---|--|
| | Amount and Basis of Deductible PER CLAIM or PER OCCURRENCE | |
| Bodily Injury Liability | \$ | \$ |
| OR | | |
| Property Damage Liability | \$ | \$ 2,000 Products/Completed Operations |
| OR | | |
| Bodily Injury Liability and/or Property Damage Liability Combined | \$ | \$ |

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

APPLICATION OF ENDORSEMENT (Enter below any limitations on the application of this endorsement. If no limitation is entered, the deductibles apply to damages for all "bodily injury" and "property damage", however caused):

- A. Our obligation under the Bodily Injury Liability and Property Damage Liability Coverages to pay damages on your behalf applies only to the amount of damages in excess of any deductible amounts stated in the Schedule above as applicable to such coverages.
- B. You may select a deductible amount on either a per claim or a per "occurrence" basis. Your selected deductible applies to the coverage option and to the basis of the deductible indicated by the placement of the deductible amount in the Schedule above. The deductible amount stated in the Schedule above applies as follows:
1. **PER CLAIM BASIS.** If the deductible amount indicated in the Schedule above is on a per claim basis, that deductible applies as follows:
 - a. Under Bodily Injury Liability Coverage, to all damages sustained by any one person because of "bodily injury";
 - b. Under Property Damage Liability Coverage, to all damages sustained by any one person because of "property damage"; or
 - c. Under Bodily Injury Liability and/or Property Damage Liability Coverage Combined, to all damages sustained by any one person because of:
 - (1) "Bodily injury";
 - (2) "Property damage"; or
 - (3) "Bodily injury" and "property damage" combined
- as the result of any one "occurrence".
- If damages are claimed for care, loss of services or death resulting at any time from "bodily injury", a separate deductible amount will be applied to each person making a claim for such damages.
- With respect to "property damage", person includes an organization.

000020 BB/133

CST 00073390

2. **PER OCCURRENCE BASIS.** If the deductible amount indicated in the Schedule above is on a "per occurrence" basis, that deductible amount applies as follows:
- a. Under Bodily Injury Liability Coverage, to all damages because of "bodily injury";
 - b. Under Property Damage Liability Coverage, to all damages because of "property damage"; or
 - c. Under Bodily Injury Liability and/or Property Damage Liability Coverage Combined, to all damages because of:
 - (1) "Bodily injury";
 - (2) "Property damage"; or
 - (3) "Bodily injury" and "property damage" combinedas the result of any one "occurrence", regardless of the number of persons or organizations who sustain damages because of that "occurrence."
- C. The terms of this insurance, including those with respect to:
1. Our right and duty to defend the insured against any "suits" seeking those damages; and
 2. Your duties in the event of an "occurrence", claim, or "suit"
- apply irrespective of the application of the deductible amount.
- D. We may pay any part or all of the deductible amount to effect settlement of any claim or "suit" and, upon notification of the action taken, you shall promptly reimburse us for such part of the deductible amount as has been paid by us.

COMMERCIAL GENERAL LIABILITY
CG 21 06 05 14

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**EXCLUSION – ACCESS OR DISCLOSURE OF
CONFIDENTIAL OR PERSONAL INFORMATION AND
DATA-RELATED LIABILITY – WITH
LIMITED BODILY INJURY EXCEPTION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

- A. Exclusion 2.p. of Section I – Coverage A – Bodily Injury And Property Damage Liability is replaced by the following:

2. Exclusions

This insurance does not apply to:

- p. Access Or Disclosure Of Confidential Or Personal Information And Data-related Liability

Damages arising out of:

- (1) Any access to or disclosure of any person's or organization's confidential or personal information, including patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of nonpublic information; or
- (2) The loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate electronic data.

This exclusion applies even if damages are claimed for notification costs, credit monitoring expenses, forensic expenses, public relations expenses or any other loss, cost or expense incurred by you or others arising out of that which is described in Paragraph (1) or (2) above.

However, unless Paragraph (1) above applies, this exclusion does not apply to damages because of "bodily injury".

As used in this exclusion, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

- B. The following is added to Paragraph 2. Exclusions of Section I – Coverage B – Personal And Advertising Injury Liability:

2. Exclusions

This insurance does not apply to:

Access Or Disclosure Of Confidential Or Personal Information

"Personal and advertising injury" arising out of any access to or disclosure of any person's or organization's confidential or personal information, including patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of nonpublic information.

This exclusion applies even if damages are claimed for notification costs, credit monitoring expenses, forensic expenses, public relations expenses or any other loss, cost or expense incurred by you or others arising out of any access to or disclosure of any person's or organization's confidential or personal information.

000020 89/133

DST 00073390

POLICY NUMBER: CPP 1050926 04

COMMERCIAL GENERAL LIABILITY
CG 21 16 04 13

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.
EXCLUSION – DESIGNATED PROFESSIONAL SERVICES

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

| Description Of Professional Services |
|--|
| 1. ALL PROFESSIONAL SERVICES |
| 2. |
| 3. |
| Information required to complete this Schedule, if not shown above, will be shown in the Declarations. |

With respect to any professional services shown in the Schedule, the following exclusion is added to Paragraph 2. Exclusions of Section I – Coverage A – Bodily Injury And Property Damage Liability and Paragraph 2. Exclusions of Section I – Coverage B – Personal And Advertising Injury Liability:

This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" due to the rendering of or failure to render any professional service.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of or failure to render any professional service.

000020 80/133

DST 00073390

COMMERCIAL GENERAL LIABILITY
CG 24 26 04 13

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.
AMENDMENT OF INSURED CONTRACT DEFINITION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

The definition of "insured contract" in the Definitions section is replaced by the following:

"Insured contract" means:

- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";
- b. A sidetrack agreement;
- c. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
- d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
- e. An elevator maintenance agreement;
- f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization, provided the "bodily injury" or "property damage" is caused, in whole or in part, by you or by those acting on your behalf. However, such part of a contract or agreement shall only be considered an "insured contract" to the extent your assumption of the tort liability is permitted by law. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph f. does not include that part of any contract or agreement:

- (1) That indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass or crossing;
- (2) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
 - (a) Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
 - (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or
- (3) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in (2) above and supervisory, inspection, architectural or engineering activities.

000020 81/133

DSF 00073360

COMMERCIAL GENERAL LIABILITY ENHANCEMENT ENDORSEMENT

The Commercial General Liability Enhancement Endorsement is an optional endorsement that provides coverage enhancements. The following is a summary of broadened coverages provided by this endorsement. No coverage is provided by this summary, refer to following endorsement for changes in your policy.

SUMMARY OF COVERAGES PAGE

| | |
|---|----|
| Bodily Injury And Property Damage Liability | |
| • Non Owned Watercraft Up To 50 Feet..... | 2 |
| Property Damage Liability | |
| • Elevators..... | 3 |
| • Fire, Lightning, Explosion Or Sprinkler Leakage Exception | 3 |
| • Borrowed Equipment (\$25,000 Per Occurrence, \$50,000 Aggregate, \$2,500 Deductible Per Occurrence | 3 |
| Supplementary Payments – Amended | |
| • Bail Bonds Up To \$5,000..... | 4 |
| • Loss of Earnings Up To \$500/Day | 4 |
| Who Is An Insured Amendments | |
| • Employee Bodily Injury To A Co-Employee..... | 4 |
| • Newly Formed Or Acquired Organizations For Up To 180 Days..... | 4 |
| • Blanket Additional Insured – Vendors – As Required By Contract..... | 4 |
| • Blanket Additional Insured – Lessor Of Leased Equipment..... | 6 |
| • Blanket Additional Insured – Managers Or Lessors Of Premises..... | 6 |
| • Blanket Additional Insured – State Or Governmental Agency Or Subdivision Or Political Subdivision – Permits Or Authorizations | 7 |
| • Blanket Additional Insured – State Or Governmental Agency Or Subdivision Or Political Subdivision – Permits Or Authorizations Relating To Premises | 8 |
| Damage To Premises Rented To You – \$300,000..... | 9 |
| Medical Payments Increased Limit – \$10,000 Or Amount Shown on Declarations..... | 9 |
| Conditions | |
| • Knowledge of Occurrence, Offense, Claim Or Suit Amended..... | 9 |
| • Unintentional Failure To Disclose Hazards..... | 9 |
| • Waiver of Subrogation | 10 |
| Insured Contract Amended | 10 |
| Personal And Advertising Injury Redefined | |
| • Televised, Videotaped Or Electronic Publication | 10 |

000020 02/133

DST 00073390

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY**COMMERCIAL GENERAL LIABILITY ENHANCEMENT ENDORSEMENT**

This endorsement modifies the insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

With respect to the coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by this endorsement. The SECTIONS of the Commercial General Liability Coverage Form identified in this endorsement will be amended as shown below.

SECTION I – COVERAGES AMENDMENTS**COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY****A. Non Owned Aircraft Or Watercraft**

Item 2. Exclusions, Paragraph g. is replaced by the following:

g. Aircraft, Auto Or Watercraft

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft owned or operated by or rented or loaned to any insured. Use includes operation and "loading or unloading".

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved in the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft that is owned or operated by or rented or loaned to any insured.

This exclusion does not apply to:

- (1) A watercraft while ashore on premises you own or rent;
- (2) A watercraft you do not own that is:
 - (a) Less than 50 feet long; and
 - (b) Not being used to carry persons or property for a charge;

This Subparagraph (2) applies to any person, who with your expressed or implied consent, either uses or is responsible for the use of the watercraft;

- (3) Parking an "auto" on, or on the ways next to, premises you own or rent, provided the "auto" is not owned by or rented or loaned to you or the insured;

- (4) Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft; or

- (5) "Bodily injury" or "property damage" arising out of:

- (a) The operation of machinery or equipment that is attached to, or part of, a land vehicle that would qualify under the definition of "mobile equipment" if it were not subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged; or
- (b) The operation of any of the machinery or equipment listed in Paragraph f. (2) or f. (3) of the definition of "mobile equipment".

B. Damage To Property Coverage Extensions

Item 2. Exclusions, Paragraph j. is replaced by the following:

j. Damage To Property

"Property damage" to:

- (1) Property you own, rent, or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;
- (2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;
- (3) Property loaned to you;
- (4) Personal property in the care, custody or control of the insured;

(5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or

(6) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

Paragraphs (1), (3) and (4) of this exclusion do not apply to "property damage" (other than damage by fire, lightning, explosion or sprinkler leakage) to premises, including the contents of such premises, rented to you for a period of seven or fewer consecutive days. A separate limit of insurance applies to Damage To Premises Rented To You as described in **SECTION III - LIMITS OF INSURANCE**. However, the provisions of this paragraph do not apply if coverage for Damage To Premises Rented To You is excluded by endorsement.

Paragraph (2) of this exclusion does not apply if the premises are "your work" and were never occupied, rented or held for rental by you.

Paragraphs (3) and (4) of this exclusion do not apply to the use of elevators.

Paragraphs (3), (4), (5) and (6) of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraph (4) of this exclusion does not apply to "property damage" to borrowed equipment while not being used to perform operations at the jobsite. Subject to Paragraph 2. of **SECTION III - LIMITS OF INSURANCE**, the rules below fix the most we will pay for "property damage" under this provision:

(1) \$25,000 any one "occurrence", regardless of the number of persons or organizations who sustain damages because of that "occurrence";

(2) \$50,000 annual aggregate; and

(3) We will pay only for damages in excess of \$2,500 as a result of any one "occurrence", regardless of the number of persons or organizations who sustain damages because of that "occurrence". We may, or if required by law, pay all or any part of any deductible amount, if applicable, to effect settlement of any claim or "suit". Upon notice of our payment of a deductible amount, you shall promptly reimburse us for the part of the deductible amount we paid.

Paragraph (6) of this exclusion does not apply to "property damage" included in the "products-completed operations hazard".

The insurance provided for "property damage" from the use of elevators and for "property damage" to borrowed equipment is excess over any other valid and collectible property insurance (including any deductible portion thereof) available to the insured whether primary, excess, contingent or on any other basis.

C. Damage To Premises Rented To You

Item 2. **Exclusions**, the last paragraph is replaced by the following:

Exclusions c. through n. do not apply to damage by fire, lightning, explosion or sprinkler leakage to premises while rented to you or temporarily occupied by you with permission of the owner. A separate limit of insurance applies to this coverage as described in Paragraph 6. of **SECTION III - LIMITS OF INSURANCE**.

COVERAGE B - PERSONAL AND ADVERTISING INJURY LIABILITY

D. Personal And Advertising Injury

Item 2. **Exclusions** is amended by replacing Sub-paragraphs b. and c. with the following:

b. Material Published With Knowledge Of Falsity

"Personal and advertising injury" arising out of oral, written, televised, videotaped or electronic publication, in any manner, of material, if done by or at the direction of the insured with knowledge of its falsity.

c. Material Published Prior To Policy Period

"Personal and advertising injury" arising out of oral, written, televised, videotaped or electronic publication, in any manner, of material whose first publication took place before the beginning of the policy period.

000020 95/133

DST 00073390

SUPPLEMENTARY PAYMENTS – COVERAGES A AND B

E. Supplementary Payments – Coverages A and B

Item 1. is amended by replacing Subparagraphs b. and d. with the following:

- b. Up to \$5,000 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.
- d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$500 a day because of time off from work.

SECTION II – WHO IS AN INSURED AMENDMENTS

A. Employee Bodily Injury To A Co-Employee

Paragraph 2. a. (1) is replaced by the following:

- (1) "Bodily injury" or "personal and advertising injury":
 - (a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), or to your other "volunteer workers" while performing duties related to the conduct of your business;
 - (b) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraph (1) (a) above; or
 - (c) Arising out of his or her providing or failing to provide professional health care services.

B. Newly Acquired Organizations

Paragraph 3. a. is replaced by the following:

- a. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier;

The following are added:

C. Blanket Additional Insured – Vendors – As Required By Contract

- 1. Section II – Who Is An Insured is amended to include as an additional insured any person(s) or organization(s) (referred to throughout this endorsement as vendor) with whom you have agreed in a written contract, executed prior to loss, to name as an additional insured, but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business.

However,

- a. The insurance afforded to such vendor only applies to the extent permitted by law; and
 - b. If coverage provided to the vendor is required by a contract or agreement, the insurance afforded to such vendor will not be broader than that which you are required by the contract or agreement to provide for such vendor.
- 2. With respect to the insurance afforded to these vendors, the following additional exclusions apply:
 - a. The insurance afforded the vendor does not apply to:
 - (1) "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;
 - (2) Any express warranty unauthorized by you;
 - (3) Any physical or chemical change in the product made intentionally by the vendor;
 - (4) Repackaging, except when unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;

- (5) Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;
- (6) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;
- (7) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or
- (8) "Bodily injury or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:
- (i) The exceptions contained in Subparagraphs (4) or (6); or
- (ii) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.
3. This Provision C. does not apply:
- a. To any insured person or organization from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products;
- b. To any vendor for which coverage as an additional insured specifically is scheduled by endorsement; or
- c. When liability included within the "products-completed operations hazard" has been excluded for such product either by the provisions of the coverage part or by endorsement.
4. With respect to the insurance afforded to these vendors, the following is added to Section III – Limits Of Insurance:
- If coverage provided to the vendor is required by a contract or agreement, the most we will pay on behalf of the vendor is:
- a. The minimum amount required by the contract or agreement; or
- b. The Limits of Insurance shown in the Declarations;
- whichever is less.
- This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.
5. With respect to the insurance afforded to these additional insureds, the following additional exclusion applies:
- This insurance does not apply to:
- a. "Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:
- (1) The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
- (2) Supervisory, inspection, architectural or engineering activities.
- This exclusion applies even if the claims against an additional insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of or failure to render any professional services by you with respect to your providing engineering, architectural or surveying services in your capacity as an engineer, architect or surveyor.

000020 94/133

DST 00073380

D. Blanket Additional Insured – Lessor Of Leased Equipment

1. **Section II – Who Is An Insured** is amended to include as an additional insured any person(s) or organization(s) from whom you lease equipment when you and such person(s) or organization(s) have agreed in writing in a contract or agreement, executed prior to loss, that such person(s) or organization(s) be added as an additional insured on your policy. Such person(s) or organization(s) is an insured only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person(s) or organization(s).

However, the insurance afforded to such additional insured:

- a. Only applies to the extent permitted by law; and
- b. Will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

A person's or organization's status as an additional insured under this endorsement ends when their contract or agreement with you for such leased equipment ends.

2. With respect to the insurance afforded to these additional insureds, this insurance does not apply to any "occurrence" which takes place after the equipment lease expires.
3. With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits Of Insurance**:

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is:

- a. The minimum amount required by the contract or agreement; or
 - b. The Limits of Insurance shown in the Declarations;
- whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

4. With respect to the insurance afforded to these additional insureds, the following additional exclusion applies:

This insurance does not apply to:

- a. "Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:
 - (1) The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
 - (2) Supervisory, inspection, architectural or engineering activities.

This exclusion applies even if the claims against an additional insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of or failure to render any professional services by you with respect to your providing engineering, architectural or surveying services in your capacity as an engineer, architect or surveyor.

E. Blanket Additional Insured – Managers Or Lessors Of Premises

1. **Section II – Who Is An Insured** is amended to include as an additional insured any person(s) or organization(s) with whom you have agreed in a written contract, executed prior to loss, to name as an additional insured, but only with respect to liability arising out of the ownership, maintenance or use of that part of the premises leased to you, subject to the following additional exclusions:

This insurance does not apply to:

- a. Any "occurrence" which takes place after you cease to be a tenant in that premises.
- b. Structural alterations, new construction or demolition operations performed by or on behalf of such additional insured.

However:

- a. The insurance afforded to such additional insured only applies to the extent permitted by law; and
 - b. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.
2. With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits Of Insurance**:

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is:

- a. The minimum amount required by the contract or agreement; or
- b. The Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

3. With respect to the insurance afforded to these additional insureds, the following additional exclusion applies:

This insurance does not apply to:

- a. "Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:
 - (1) The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
 - (2) Supervisory, inspection, architectural or engineering activities.

This exclusion applies even if the claims against an additional insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of or failure to render any professional services by you with respect to your providing engineering, architectural or surveying services in your capacity as an engineer, architect or surveyor.

F. Blanket Additional Insured – State Or Governmental Agency Or Subdivision Or Political Subdivision – Permits Or Authorizations

Section II – Who Is An Insured is amended to include as an additional insured any state or governmental agency or subdivision or political subdivision with whom you have agreed in a written contract, executed prior to loss, to name as an additional insured, subject to the following provisions:

1. This insurance applies only with respect to operations performed by you or on your behalf for which the state or governmental agency or subdivision or political subdivision has issued a permit or authorization.

However:

- a. The insurance afforded to such additional insured only applies to the extent permitted by law; and
- b. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

2. This insurance does not apply to:

- a. "Bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the federal government, state or municipality; or
- b. "Bodily injury" or "property damage" included within the "products-completed operations hazard".

3. With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits Of Insurance**:

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is:

- a. The minimum amount required by the contract or agreement; or
- b. The Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

000020 85/133

DST 00073390

4. With respect to the insurance afforded to these additional insureds, the following additional exclusion applies:

This insurance does not apply to:

- a. "Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

(1) The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or

(2) Supervisory, inspection, architectural or engineering activities.

This exclusion applies even if the claims against an additional insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of or failure to render any professional services by you with respect to your providing engineering, architectural or surveying services in your capacity as an engineer, architect or surveyor.

G. Blanket Additional Insured - State Or Governmental Agency Or Subdivision Or Political Subdivision - Permits Or Authorizations Relating To Premises

Section II - Who Is An Insured is amended to include as an additional insured any state or governmental agency or subdivision or political subdivision with whom you have agreed in a written contract, executed prior to loss, to name as an additional insured, subject to the following provision:

1. This insurance applies only with respect to the following hazards for which the state or governmental agency or subdivision or political subdivision has issued a permit or authorization in connection with premises you own, rent or control and to which this insurance applies:

- a. The existence, maintenance, repair, construction, erection or removal of advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoist away openings, sidewalk vaults, street banners or decorations and similar exposures; or

- b. The construction, erection or removal of elevators; or

- c. The ownership, maintenance or use of any elevators covered by this insurance.

However,

- a. The insurance afforded to such additional insured only applies to the extent permitted by law; and

- b. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

2. With respect to the insurance afforded to these additional insureds, the following is added to **Section III - Limits Of Insurance**:

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is:

- a. The minimum amount required by the contract or agreement; or

- b. The Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

3. With respect to the insurance afforded to these additional insureds, the following additional exclusion applies:

This insurance does not apply to:

- a. "Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

(1) The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or

(2) Supervisory, inspection, architectural or engineering activities.

This exclusion applies even if the claims against an additional insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of or failure to render any professional services by you with respect to your providing engineering, architectural or surveying services in your capacity as an engineer, architect or surveyor.

SECTION III - LIMITS OF INSURANCE AMENDMENTS

A. Damage To Premises Rented To You

Paragraph 6. is replaced by the following:

6. Subject to Paragraph 5. above, the most we will pay under Coverage A for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, lightning, explosion or sprinkler leakage, while rented to you or temporarily occupied by you with permission of the owner is the greater of:

- a. \$300,000; or
- b. The amount shown next to the Damage To Premises Rented To You Limit in the Declarations.

However, the provisions of this paragraph do not apply if Damage To Premises Rented To You Coverage is excluded by endorsement.

B. Medical Expense Limit

Paragraph 7. is replaced with the following:

7. Subject to Paragraph 5. above, the most we will pay under Coverage C for all medical expenses because of "bodily injury" sustained by any one person is the greater of:

- a. \$10,000; or
- b. The amount shown next to the Medical Expense Limit in the Declarations.

This insurance does not apply if coverage for Medical Expenses is excluded either by the provisions of the coverage part or by endorsement.

SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS AMENDMENTS

A. Knowledge Of Occurrence

Item 2. Duties In The Event Of Occurrence, Offense, Claim or Suit is amended by adding the following:

- e. You must give us or our authorized representative prompt notice of an "occurrence", claim or loss only when the "occurrence", claim or loss is known to:

- (1) You, if you are an individual;
- (2) A partner, if you are a partnership;
- (3) An executive officer or insurance manager, if you are a corporation; or
- (4) A member or manager, if you are a limited liability company.

B. Other Insurance

Item 4. Other Insurance, b. Excess Insurance (1) (a) (ii) is replaced by the following:

- (ii) That is fire, lightning, explosion or sprinkler leakage insurance for premises rented to you or temporarily occupied by you with permission of the owner;

C. Unintentional Failure To Disclose Hazards

Item 6. Representations is replaced by the following:

6. Representations And Unintentional Failure To Disclose Hazards

- a. By accepting this policy, you agree:
 - (1) The statements in the Declarations are accurate and complete;
 - (2) Those statements are based upon representations you made to us; and
 - (3) We have issued this policy in reliance upon your representations.
- b. If you unintentionally fail to disclose any hazards existing at the inception date of your policy, we will not deny coverage under this Coverage Part because of such failure. However, this provision does not affect our right to collect additional premium or exercise our right of cancellation or non-renewal.

000020 95/123

DST 00073390

D. Waiver of Subrogation

Item 8. Transfer of Rights of Recovery Against Others to Us is hereby amended by the addition of the following:

We waive any right of recovery we may have because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a written contract, executed prior to loss, requiring such waiver with that person or organization and included in the "products-completed operations hazard". However, our rights may only be waived prior to the "occurrence" giving rise to the injury or damage for which we make payment under this Coverage Part. The insured must do nothing after a loss to impair our rights. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce those rights.

SECTION V – DEFINITIONS AMENDMENTS

A. Insured Contract Amended

Paragraph 9. a. is replaced by the following:

- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire, lightning, explosion or sprinkler leakage to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";

B. Personal And Advertising Injury Redefined

Paragraph 14. d. and e. are replaced by the following:

- d. Oral, written, televised, videotaped or electronic publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or service;
- e. Oral, written, televised, videotaped or electronic publication of material that violates a person's right of privacy;

COMMERCIAL GENERAL LIABILITY
WN GL 89 07 15

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED – CONTRACTORS –
OPERATIONS AND COMPLETED OPERATIONS – WITH
ADDITIONAL INSURED REQUIREMENT
IN CONSTRUCTION CONTRACT**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

1. Additional Insured – Operations

A. Operations Performed For An Additional Insured

Section II – Who Is An Insured is amended to include as an additional insured any person or organization, if you and such person or organization have agreed in writing in a contract or agreement that such person or organization be included as an additional insured on your policy, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" arising out of your ongoing operations for the additional insured.

B. Limitations

The Operations Performed for Additional Insured coverage is limited as follows:

- (1) This insurance does not apply to "bodily injury" or "property damage" occurring after:
 - a. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
 - b. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

2. Additional Insured – Completed Operations

A. Additional Insured – Completed Operations

Section II – Who Is An Insured is amended to include as an additional insured any person or organization, if you and such person or organization have agreed in writing in a contract or agreement that such person or organization be included as an additional insured on your policy, but only with respect to "bodily injury" or "property damage", arising out of "your work" performed for the additional insured and included in the "products-completed operations hazard".

B. Limitations

The Additional Insured – Completed Operations coverage is limited as follows:

- (1) A person or organization's status as an insured under Additional Insured – Completed Operations continues only for the period of time required by any written contract or agreement.
- (2) The insurance provided to the additional insured does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of "your work" for which a consolidated (wrap-up) insurance program has been provided by the prime contractor-project manager or owner of the construction project in which you are involved.

000020 87/133

DST 00073390

3. Primary and Noncontributory

The following is added to the **Other Insurance** Condition and supersedes any provision to the contrary:

Primary And Noncontributory Insurance

This insurance is primary to and will not seek contribution from any other insurance available to an additional insured under your policy provided that:

- (1) The additional insured is a Named Insured under such other insurance; and
- (2) You have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to the additional insured.

4. Other Provisions Applicable to Additional Insured – Operations and Additional Insured – Completed Operations

- A. The Amendment of Insured Contract Definition (Endorsement CG 24 26) does not apply to an additional insured.
- B. The coverage provided under Paragraph f. of the definition of "insured contract" under **Section V – Definitions** does not apply to an additional insured under this endorsement unless required by a written contract or agreement.
- C. The insurance afforded to such additional insured only applies to the extent permitted by law; and

If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

- D. With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits Of Insurance**:

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is:

- (1) The minimum amount required by the contract or agreement; or
- (2) The Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

- E. With respect to the insurance afforded to these additional insureds, the following additional exclusion applies:

This insurance does not apply to:

- (1) "Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:
 - a. The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
 - b. Supervisory, inspection, architectural or engineering activities.

This exclusion applies even if the claims against an additional insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of or failure to render any professional services by you with respect to your providing engineering, architectural or surveying services in your capacity as an engineer, architect or surveyor.

9706 4th Avenue NE, Ste 200
Seattle, WA 98115-2162
www.wnins.com
A Stock Company



COMMERCIAL LIABILITY UMBRELLA DECLARATION



Group # 0001029070
Policy # UMB 1008379 04

Policy Period: From JANUARY 1, 2016 To JANUARY 1, 2017
12:01 A.M. standard time at the Named Insured's mailing address.

Transaction RENEWAL DECLARATION

Insured Name and Address

AGRI SYSTEMS
DBA ASI INDUSTRIAL
1300 MINNESOTA AVE
C/O ROBERT HAMLIN
BILLINGS MT 59101

Agent

PAYNEWEST INSURANCE INC
PO BOX 30638
BILLINGS, MT 59107-0638

09162

Telephone: 406-656-9800

Business Description

MACHINERY & EQUIP INST & SVC

Type of Business

SUBCHAPTER 'S' CORP

Audit Period

NONE

Billing Type

DIRECT

IN RETURN FOR THE PAYMENT OF THE PREMIUM, AND SUBJECT TO ALL THE TERMS OF THIS POLICY, WE AGREE WITH YOU TO PROVIDE THE INSURANCE AS STATED IN THIS POLICY.

LIMITS OF INSURANCE

COVERAGES

Aggregate Limit

Liability Coverage - except with respect to covered autos

LIMITS OF LIABILITY

\$2,000,000

Coverage A

Bodily Injury and Property Damage Liability

\$2,000,000 each occurrence

Coverage B

Personal and Advertising Injury Liability

\$2,000,000 any one person or organization subject to the Aggregate Limit of Liability

Retained Limit

Self Insured Retention

\$10,000 any one occurrence or offense

PREMIUM

Annual Premium

\$12,095

DISCLOSURE OF PREMIUM:

The portion of your annual premium attributable to coverage for certified acts of terrorism is \$ 139.00

Forms and Endorsements Applicable to this Policy

See Forms and Endorsements Schedule

Use Declarations together with the common policy conditions, coverage part declarations, coverage form(s), and form(s) and endorsements, if any, issued, complete the above numbered policy.

Issued Date: 12/31/2015

WN CU 02 07 07

INSURED COPY



**COMMERCIAL LIABILITY UMBRELLA
 SCHEDULE OF UNDERLYING INSURANCE**

| POLICY NUMBER, CARRIER and POLICY PERIOD | TYPE OF POLICY | LIMITS OF INSURANCE |
|---|---------------------------------|---|
| CPP 1049484 | Commercial Auto Liability | Bodily Injury Liability Each Person Each Accident |
| WESTERN NATIONAL ASSURANCE CO | Property Damage Liability | Each Accident |
| 01/01/2016 to 01/01/2017 | Combined Single Limit | \$1,000,000 |
| CPP 1050926 | Commercial General Liability | \$2,000,000 General Aggregate (other than Products- Completed Operations) |
| WESTERN NATIONAL ASSURANCE CO | | \$2,000,000 Products-Completed Operations Aggregate |
| | | \$1,000,000 Personal and Advertising Injury |
| 01/01/2016 to 01/01/2017 | | \$1,000,000 Each Occurrence |

FORMS AND ENDORSEMENTS SCHEDULE

| Coverage Line | Form Number | Ed. Date | Description |
|---------------------|-------------|----------|--------------------------------|
| Commercial Umbrella | IL0017 | (11/98) | Common Policy Conditions |
| Commercial Umbrella | IL0167 | (09/08) | Montana Changes - Conformity |
| Commercial Umbrella | WNIL09 | (01/02) | Automatic Termination Provisio |
| Commercial Umbrella | CU0001 | (04/13) | Comm Liab Umbrella Cvg Form |
| Commercial Umbrella | CU0143 | (09/00) | MT Chgs-Representations Fraud |
| Commercial Umbrella | CU0207 | (04/13) | MT Changes-Canc & Nonrenewal |
| Commercial Umbrella | CU2123 | (02/02) | Nuclear Energy Liab Excl Endt |
| Commercial Umbrella | CU2124 | (12/07) | Excl-Non-Owned Aircraft |
| Commercial Umbrella | CU2125 | (12/01) | Total Pollution Excl Endt |
| Commercial Umbrella | CU2127 | (12/04) | Fungi or Bacteria Exclusion |
| Commercial Umbrella | CU2131 | (01/15) | Excl Oth Acts Terr Outside US |
| Commercial Umbrella | CU2136 | (01/15) | Excl of Punitive Damages Relat |
| Commercial Umbrella | CU2142 | (12/04) | Excl-Exterior Insulation |
| Commercial Umbrella | CU2150 | (03/05) | Silica or Silica Related Dust |
| Commercial Umbrella | CU2155 | (06/08) | Amended Terrorism Coverage |
| Commercial Umbrella | CU2186 | (05/14) | Excl-Acc. or Disc of Confident |
| Commercial Umbrella | CU2403 | (09/00) | Waiver of Transfer of Rights |
| Commercial Umbrella | CU2430 | (04/13) | Amendment of Insured Contract |
| Commercial Umbrella | WNCU109 | (07/15) | Amend Other Ins Cond Non-Contr |
| Commercial Umbrella | WNCU11 | (07/14) | Abuse or Molestation Excl |
| Commercial Umbrella | WNCU114 | (07/15) | Who is an Insured Amended |
| Commercial Umbrella | WNCU47 | (07/14) | Occupational Disease Exclusion |
| Commercial Umbrella | WNCU91 | (07/10) | Excl-Punitive Damages |
| Commercial Umbrella | WNCU92 | (01/04) | Excl-Lead Liability |
| Commercial Umbrella | WNCU93 | (01/04) | Excl-Asbestos |

COMMERCIAL UMBRELLA LIABILITY COVERAGE FORM

QUICK REFERENCE

READ YOUR POLICY CAREFULLY

The Commercial Umbrella Liability Coverage policy consists of Declarations, a Commercial Umbrella Liability Coverage Form (CU 00 01), Common Policy Conditions and Endorsements, if applicable. Following is a Quick Reference indexing of the principal provisions contained in each of the components making up the Coverage Part, listed in sequential order.

DECLARATIONS

Policy Period
Named Insured
Limits Of Insurance
Premium
Applicable Endorsements

SCHEDULE OF UNDERLYING INSURANCE

Schedule Of Underlying Policies

SECTION I – COVERAGES

Coverage A – Bodily Injury And Property Damage Liability
Insuring Agreement
Exclusions
Coverage B – Personal And Advertising Injury Liability
Insuring Agreement
Exclusions
Supplementary Payments – Coverages A and B

SECTION II – WHO IS AN INSURED

SECTION III – LIMITS OF INSURANCE

SECTION IV – CONDITIONS

Appeals
Bankruptcy
Duties In The Event Of Occurrence, Offense, Claim Or Suit
Legal Action Against Us
Other Insurance
Premium Audit
Representations Or Fraud
Separation Of Insureds
Transfer Of Rights Of Recovery Against Others To Us
When We Do Not Renew
Loss Payable
Transfer Of Defense
Maintenance Of/Changes To Underlying Insurance
Expanded Coverage Territory

SECTION V – DEFINITIONS

IMPORTANT: This Quick Reference is **not** part of your Umbrella Policy and does **not** provide coverage. Refer to your Commercial Umbrella Liability Policy for actual contractual provisions.

COMMERCIAL LIABILITY UMBRELLA
CU 00 01 04 13**COMMERCIAL LIABILITY UMBRELLA COVERAGE FORM**

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured under this policy. The words "we", "us" and "our" refer to the company providing this insurance.

The word "insured" means any person or organization qualifying as such under Section II -- Who Is An Insured.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section V -- Definitions.

SECTION I -- COVERAGES**COVERAGE A -- BODILY INJURY AND PROPERTY DAMAGE LIABILITY****1. Insuring Agreement**

- a. We will pay on behalf of the insured the "ultimate net loss" in excess of the "retained limit" because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking damages for such "bodily injury" or "property damage" when the "underlying insurance" does not provide coverage or the limits of "underlying insurance" have been exhausted. When we have no duty to defend, we will have the right to defend, or to participate in the defense of, the insured against any other "suit" seeking damages to which this insurance may apply. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. At our discretion, we may investigate any "occurrence" that may involve this insurance and settle any resultant claim or "suit" for which we have the duty to defend. But:

- (1) The amount we will pay for the "ultimate net loss" is limited as described in Section III -- Limits Of Insurance; and
- (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments -- Coverages A and B.

- b. This insurance applies to "bodily injury" or "property damage" that is subject to an applicable "retained limit". If any other limit, such as a sublimit, is specified in the "underlying insurance", this insurance does not apply to "bodily injury" or "property damage" arising out of that exposure unless that limit is specified in the Declarations under the Schedule of "underlying insurance".
- c. This insurance applies to "bodily injury" and "property damage" only if:
 - (1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";
 - (2) The "bodily injury" or "property damage" occurs during the policy period; and
 - (3) Prior to the policy period, no insured listed under Paragraph 1.a. of Section II -- Who Is An Insured and no "employee" authorized by you to give or receive notice of an "occurrence" or claim, knew that the "bodily injury" or "property damage" had occurred, in whole or in part. If such a listed insured or authorized "employee" knew, prior to the policy period, that the "bodily injury" or "property damage" occurred, then any continuation, change or resumption of such "bodily injury" or "property damage" during or after the policy period will be deemed to have been known prior to the policy period.
- d. "Bodily injury" or "property damage" which occurs during the policy period and was not, prior to the policy period, known to have occurred by any insured listed under Paragraph 1.a. of Section II -- Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim, includes any continuation, change or resumption of that "bodily injury" or "property damage" after the end of the policy period.

- e. "Bodily injury" or "property damage" will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph 1.a. of Section II - Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim:
 - (1) Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;
 - (2) Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage"; or
 - (3) Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.
 - f. Damages because of "bodily injury" include damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury".
2. Exclusions
- This insurance does not apply to:
- a. Expected Or Intended Injury

"Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" resulting from the use of reasonable force to protect persons or property.
 - b. Contractual Liability

"Bodily injury" or "property damage" for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:

 - (1) That the insured would have in the absence of the contract or agreement; or
 - (2) Assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement. Solely for the purposes of liability assumed in an "insured contract", reasonable attorneys' fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of "bodily injury" or "property damage", provided:
 - (a) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same "insured contract"; and
 - (b) Such attorneys' fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.
 - c. Liquor Liability

"Bodily injury" or "property damage" for which any insured may be held liable by reason of:

 - (1) Causing or contributing to the intoxication of any person;
 - (2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
 - (3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in:

 - (a) The supervision, hiring, employment, training or monitoring of others by that insured; or
 - (b) Providing or failing to provide transportation with respect to any person that may be under the influence of alcohol;

if the "occurrence" which caused the "bodily injury" or "property damage" involved that which is described in Paragraph (1), (2) or (3) above.

However, this exclusion applies only if you are in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages. For the purposes of this exclusion, permitting a person to bring alcoholic beverages on your premises, for consumption on your premises, whether or not a fee is charged or a license is required for such activity, is not by itself considered the business of selling, serving or furnishing alcoholic beverages.

This exclusion does not apply to the extent that valid "underlying insurance" for the liquor liability risks described above exists or would have existed but for the exhaustion of underlying limits for "bodily injury" and "property damage". To the extent this exclusion does not apply, the

insurance provided under this Coverage Part for the liquor liability risks described above will follow the same provisions, exclusions and limitations that are contained in the applicable "underlying insurance", unless otherwise directed by this insurance.

d. **Workers' Compensation And Similar Laws**

Any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

e. **ERISA**

Any obligation of the insured under the Employee Retirement Income Security Act of 1974 (ERISA), and any amendments thereto or any similar federal, state or local statute.

f. **Auto Coverages**

(1) "Bodily injury" or "property damage" arising out of the ownership, maintenance or use of any "auto" which is not a "covered auto"; or

(2) Any loss, cost or expense payable under or resulting from any first-party physical damage coverage; no-fault law; personal injury protection or auto medical payments coverage; or uninsured or underinsured motorist law.

g. **Employer's Liability**

"Bodily injury" to:

(1) An "employee" of the insured arising out of and in the course of:

(a) Employment by the insured; or

(b) Performing duties related to the conduct of the insured's business; or

(2) The spouse, child, parent, brother or sister of that "employee" as a consequence of Paragraph (1) above.

This exclusion applies whether the insured may be liable as an employer or in any other capacity, and to any obligation to share damages with or repay someone else who must pay damages because of the injury.

This exclusion does not apply to liability assumed by the insured under an "insured contract".

With respect to injury arising out of a "covered auto", this exclusion does not apply to "bodily injury" to domestic "employees" not entitled to workers' compensation benefits. For the purposes of this insurance, a domestic "employee" is a person engaged in household or domestic

work performed principally in connection with a residence premises.

This exclusion does not apply to the extent that valid "underlying insurance" for the employer's liability risks described above exists or would have existed but for the exhaustion of underlying limits for "bodily injury". To the extent this exclusion does not apply, the insurance provided under this Coverage Part for the employer's liability risks described above will follow the same provisions, exclusions and limitations that are contained in the applicable "underlying insurance", unless otherwise directed by this insurance.

h. **Employment-related Practices**

"Bodily injury" to:

(1) A person arising out of any:

(a) Refusal to employ that person;

(b) Termination of that person's employment; or

(c) Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination or malicious prosecution directed at that person; or

(2) The spouse, child, parent, brother or sister of that person as a consequence of "bodily injury" to that person at whom any of the employment-related practices described in Paragraph (a), (b), or (c) above is directed.

This exclusion applies whether the injury-causing event described in Paragraph (a), (b) or (c) above occurs before employment, during employment or after employment of that person.

This exclusion applies whether the insured may be liable as an employer or in any other capacity, and to any obligation to share damages with or repay someone else who must pay damages because of the injury.

i. **Pollution**

(1) "Bodily injury" or "property damage" which would not have occurred in whole or part but for the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" at any time; or

(2) "Pollution cost or expense".

This exclusion does not apply if valid "underlying insurance" for the pollution liability risks described above exists or

would have existed but for the exhaustion of underlying limits for "bodily injury" and "property damage". To the extent this exclusion does not apply, the insurance provided under this Coverage Part for the pollution risks described above will follow the same provisions, exclusions and limitations that are contained in the applicable "underlying insurance", unless otherwise directed by this insurance.

j. Aircraft Or Watercraft

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft or watercraft owned or operated by or rented or loaned to any insured. Use includes operation and "loading or unloading".

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any aircraft or watercraft that is owned or operated by or rented or loaned to any insured.

This exclusion does not apply to:

- (1) A watercraft while ashore on premises you own or rent;
- (2) A watercraft you do not own that is:
 - (a) Less than 50 feet long; and
 - (b) Not being used to carry persons or property for a charge;
- (3) Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft;
- (4) The extent that valid "underlying insurance" for the aircraft or watercraft liability risks described above exists or would have existed but for the exhaustion of underlying limits for "bodily injury" or "property damage". To the extent this exclusion does not apply, the insurance provided under this Coverage Part for the aircraft or watercraft risks described above will follow the same provisions, exclusions and limitations that are contained in the "underlying insurance", unless otherwise directed by this insurance; or
- (5) Aircraft that is:
 - (a) Chartered by, loaned to, or hired by you with a paid crew; and
 - (b) Not owned by any insured.

k. Racing Activities

"Bodily injury" or "property damage" arising out of the use of "mobile equipment" or "autos" in, or while in practice for, or while being prepared for, any prearranged professional or organized racing, speed, demolition, or stunting activity or contest.

l. War

"Bodily injury" or "property damage", however caused, arising, directly or indirectly, out of:

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

m. Damage To Property

"Property damage" to:

- (1) Property:
 - (a) You own, rent, or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property; or
 - (b) Owned or transported by the insured and arising out of the ownership, maintenance or use of a "covered auto".
- (2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;
- (3) Property loaned to you;
- (4) Personal property in the care, custody or control of the insured;
- (5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or
- (6) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

Paragraph (2) of this exclusion does not apply if the premises are "your work" and were never occupied, rented or held for rental by you.

Paragraphs (1)(b), (3), (4), (5) and (6) of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraphs (3) and (4) of this exclusion do not apply to liability assumed under a written Trailer Interchange agreement.

Paragraph (6) of this exclusion does not apply to "property damage" included in the "products-completed operations hazard".

n. Damage To Your Product

"Property damage" to "your product" arising out of it or any part of it.

o. Damage To Your Work

"Property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations hazard".

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

p. Damage To Impaired Property Or Property Not Physically Injured

"Property damage" to "impaired property" or property that has not been physically injured, arising out of:

- (1) A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or
- (2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to "your product" or "your work" after it has been put to its intended use.

q. Recall Of Products, Work Or Impaired Property

Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

- (1) "Your product";
- (2) "Your work"; or
- (3) "Impaired property";

if such product, work, or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

r. Personal And Advertising Injury

"Bodily Injury" arising out of "personal and advertising injury".

s. Professional Services

"Bodily injury" or "property damage" due to rendering of or failure to render any professional service. This includes but is not limited to:

- (1) Legal, accounting or advertising services;
- (2) Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings or specifications;
- (3) Inspection, supervision, quality control, architectural or engineering activities done by or for you on a project on which you serve as construction manager;
- (4) Engineering services, including related supervisory or inspection services;
- (5) Medical, surgical, dental, X-ray or nursing services treatment, advice or instruction;
- (6) Any health or therapeutic service treatment, advice or instruction;
- (7) Any service, treatment, advice or instruction for the purpose of appearance or skin enhancement, hair removal or replacement, or personal grooming or therapy;
- (8) Any service, treatment, advice or instruction relating to physical fitness, including service, treatment, advice or instruction in connection with diet, cardiovascular fitness, bodybuilding or physical training programs;
- (9) Optometry or optical or hearing aid services including the prescribing, preparation, fitting, demonstration or distribution of ophthalmic lenses and similar products or hearing aid devices;
- (10) Body piercing services;
- (11) Services in the practice of pharmacy;
- (12) Law enforcement or firefighting services; and

- (13) Handling, embalming, disposal, burial, cremation or disinterment of dead bodies.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", involved the rendering of or failure to render any professional service.

t. **Electronic Data**

Damages arising out of the loss of, loss of use of, damage to, corruption of, inability to access or inability to manipulate electronic data.

However, this exclusion does not apply to liability for damages because of "bodily injury".

As used in this exclusion, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

This exclusion does not apply if valid "underlying insurance" for the electronic data risks described above exists or would have existed but for the exhaustion of underlying limits for "bodily injury" and "property damage". The insurance provided under this Coverage Part will follow the same provisions, exclusions and limitations that are contained in the applicable "underlying insurance", unless otherwise directed by this insurance.

u. **Recording And Distribution Of Material Or Information In Violation Of Law**

"Bodily injury" or "property damage" arising directly or indirectly out of any action or omission that violates or is alleged to violate:

- (1) The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law;
- (2) The CAN-SPAM Act of 2003, including any amendment of or addition to such law;
- (3) The Fair Credit Reporting Act (FCRA), and any amendment of or addition to such law, including the Fair and Accurate Credit Transactions Act (FACTA); or

- (4) Any federal, state or local statute, ordinance or regulation, other than the TCPA, CAN-SPAM Act of 2003 or FCRA and their amendments and additions, that addresses, prohibits, or limits the printing, dissemination, disposal, collecting, recording, sending, transmitting, communicating or distribution of material or information.

COVERAGE B – PERSONAL AND ADVERTISING INJURY LIABILITY

1. Insuring Agreement

- a. We will pay on behalf of the insured the "ultimate net loss" in excess of the "retained limit" because of "personal and advertising injury" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking damages for such "personal and advertising injury" when the "underlying insurance" does not provide coverage or the limits of "underlying insurance" have been exhausted. When we have no duty to defend, we will have the right to defend, or to participate in the defense of, the insured against any other "suit" seeking damages to which this insurance may apply. However, we will have no duty to defend the insured against any "suit" seeking damages for "personal and advertising injury" to which this insurance does not apply. At our discretion, we may investigate any offense that may involve this insurance and settle any resultant claim or "suit" for which we have the duty to defend. But:

- (1) The amount we will pay for the "ultimate net loss" is limited as described in Section III – Limits Of Insurance; and
- (2) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments – Coverages A and B.

- b. This insurance applies to "personal and advertising injury" that is subject to an applicable "retained limit". If any other limit, such as a sublimit, is specified in the "underlying insurance", this insurance does not apply to "personal and advertising injury" arising out of that exposure unless that limit is specified in the Declarations under the Schedule of "underlying insurance".

- c. This insurance applies to "personal and advertising injury" caused by an offense arising out of your business but only if the offense was committed in the "coverage territory" during the policy period.

2. Exclusions

This insurance does not apply to:

a. "Personal and advertising injury":

(1) Knowing Violation Of Rights Of Another

Caused by or at the direction of the insured with the knowledge that the act would violate the rights of another and would inflict "personal and advertising injury".

(2) Material Published With Knowledge Of Falsity

Arising out of oral or written publication, in any manner, of material, if done by or at the direction of the insured with knowledge of its falsity.

(3) Material Published Prior To Policy Period

Arising out of oral or written publication, in any manner, of material whose first publication took place before the beginning of the policy period.

(4) Criminal Acts

Arising out of a criminal act committed by or at the direction of the insured.

(5) Contractual Liability

For which the insured has assumed liability in a contract or agreement. This exclusion does not apply to:

- (a) Liability for damages that the insured would have in the absence of the contract or agreement.
- (b) Liability for false arrest, detention or imprisonment assumed in a contract or agreement.

(6) Breach Of Contract

Arising out of a breach of contract, except an implied contract to use another's advertising idea in your "advertisement".

(7) Quality Or Performance Of Goods - Failure To Conform To Statements

Arising out of the failure of goods, products or services to conform with any statement of quality or performance made in your "advertisement".

(8) Wrong Description Of Prices

Arising out of the wrong description of the price of goods, products or services stated in your "advertisement".

(9) Infringement Of Copyright, Patent, Trademark Or Trade Secret

Arising out of the infringement of copyright, patent, trademark, trade secret or other intellectual property rights. Under this exclusion, such other intellectual property rights do not include the use of another's advertising idea in your "advertisement".

However, this exclusion does not apply to infringement, in your "advertisement", of copyright, trade dress or slogan.

(10) Insureds In Media And Internet Type Businesses

Committed by an insured whose business is:

- (a) Advertising, broadcasting, publishing or telecasting;
- (b) Designing or determining content of web sites for others; or
- (c) An Internet search, access, content or service provider.

However, this exclusion does not apply to Paragraphs 14.a., b. and c. of "personal and advertising injury" under the Definitions section.

For the purposes of this exclusion, the placing of frames, borders or links, or advertising, for you or others anywhere on the Internet, is not by itself, considered the business of advertising, broadcasting, publishing or telecasting.

(11) Electronic Chatrooms Or Bulletin Boards

Arising out of an electronic chatroom or bulletin board the insured hosts, owns, or over which the insured exercises control.

(12) Unauthorized Use Of Another's Name Or Product

Arising out of the unauthorized use of another's name or product in your e-mail address, domain name or meta-tag, or any other similar tactics to mislead another's potential customers.

(13) Pollution

Arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" at any time.

(14) Employment-related Practices

To:

(a) A person arising out of any:

- (i) Refusal to employ that person;
- (ii) Termination of that person's employment; or
- (iii) Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination or malicious prosecution directed at that person; or

(b) The spouse, child, parent, brother or sister of that person as a consequence of "personal and advertising injury" to that person at whom any of the employment-related practices described in Paragraph (i), (ii) or (iii) above is directed.

This exclusion applies whether the injury-causing event described in Paragraph (i), (ii) or (iii) above occurs before employment, during employment or after employment of that person.

This exclusion applies whether the insured may be liable as an employer or in any other capacity, and to any obligation to share damages with or repay someone else who must pay damages because of the injury.

(15) Professional Services

Arising out of the rendering of or failure to render any professional service. This includes but is not limited to:

- (a) Legal, accounting or advertising services;
- (b) Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings or specifications;
- (c) Inspection, supervision, quality control, architectural or engineering activities done by or for you on a project on which you serve as construction manager;
- (d) Engineering services, including related supervisory or inspection services;
- (e) Medical, surgical, dental, X-ray or nursing services treatment, advice or instruction;

(f) Any health or therapeutic service treatment, advice or instruction;

(g) Any service, treatment, advice or instruction for the purpose of appearance or skin enhancement, hair removal or replacement, or personal grooming or therapy;

(h) Any service, treatment, advice or instruction relating to physical fitness, including service, treatment, advice or instruction in connection with diet, cardiovascular fitness, bodybuilding or physical training programs;

(i) Optometry or optical or hearing aid services including the prescribing, preparation, fitting, demonstration or distribution of ophthalmic lenses and similar products or hearing aid devices;

(j) Body piercing services;

(k) Services in the practice of pharmacy;

(l) Law enforcement or firefighting services; and

(m) Handling, embalming, disposal, burial, cremation or disinterment of dead bodies.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the offense which caused the "personal and advertising injury", involved the rendering of or failure to render any professional service.

(16) War

However caused, arising, directly or indirectly, out of:

(a) War, including undeclared or civil war;

(b) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or

(c) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

(17) Recording And Distribution Of Material Or Information In Violation Of Law

Arising directly or indirectly out of any action or omission that violates or is alleged to violate:

- (a) The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law;
- (b) The CAN-SPAM Act of 2003, including any amendment of or addition to such law;
- (c) The Fair Credit Reporting Act (FCRA), and any amendment of or addition to such law, including the Fair and Accurate Credit Transactions Act (FACTA); or
- (d) Any federal, state or local statute, ordinance or regulation, other than the TCPA, CAN-SPAM Act of 2003 or FCRA and their amendments and additions, that addresses, prohibits, or limits the printing, dissemination, disposal, collecting, recording, sending, transmitting, communicating or distribution of material or information.

b. "Pollution cost or expense".

SUPPLEMENTARY PAYMENTS - COVERAGES A AND B

1. We will pay, with respect to any claim we investigate or settle, or any "suit" against an insured we defend, when the duty to defend exists:

- a. All expenses we incur.
- b. Up to \$2,000 for cost of bail bonds (including bonds for related traffic law violations) required because of an "occurrence" we cover. We do not have to furnish these bonds.
- c. The cost of bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.
- d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$250 a day because of time off from work.
- e. All court costs taxed against the insured in the "suit". However, these payments do not include attorneys' fees or attorneys' expenses taxed against the insured.

f. Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.

g. All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.

These payments will not reduce the limits of insurance.

2. When we have the right but not the duty to defend the insured and elect to participate in the defense, we will pay our own expenses but will not contribute to the expenses of the insured or the "underlying insurer".

3. If we defend an insured against a "suit" and an indemnitee of the insured is also named as a party to the "suit", we will defend that indemnitee if all of the following conditions are met:

- a. The "suit" against the indemnitee seeks damages for which the insured has assumed the liability of the indemnitee in a contract or agreement that is an "insured contract";
- b. This insurance applies to such liability assumed by the insured;
- c. The obligation to defend, or the cost of the defense of, that indemnitee, has also been assumed by the insured in the same "insured contract";
- d. The allegations in the "suit" and the information we know about the "occurrence" are such that no conflict appears to exist between the interests of the insured and the interests of the indemnitee;
- e. The indemnitee and the insured ask us to conduct and control the defense of that indemnitee against such "suit" and agree that we can assign the same counsel to defend the insured and the indemnitee; and
- f. The indemnitee:

(1) Agrees in writing to:

- (a) Cooperate with us in the investigation, settlement or defense of the "suit";
- (b) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "suit";

- (c) Notify any other insurer whose coverage is available to the indemnitee; and
- (d) Cooperate with us with respect to coordinating other applicable insurance available to the indemnitee; and
- (2) Provides us with written authorization to:
 - (a) Obtain records and other information related to the "suit"; and
 - (b) Conduct and control the defense of the indemnitee in such "suit".

So long as the above conditions are met, attorneys' fees incurred by us in the defense of that indemnitee, necessary litigation expenses incurred by us and necessary litigation expenses incurred by the indemnitee at our request will be paid as Supplementary Payments. Notwithstanding the provisions of Paragraph 2.b.(2) of Section I - Coverage A - Bodily Injury And Property Damage Liability, such payments will not be deemed to be damages for "bodily injury" and "property damage" and will not reduce the limits of insurance.

Our obligation to defend an insured's indemnitee and to pay for attorneys' fees and necessary litigation expenses as Supplementary Payments ends when we have used up the applicable limit of insurance in the payment of judgments or settlements or the conditions set forth above, or the terms of the agreement described in Paragraph f. above, are no longer met.

SECTION II - WHO IS AN INSURED

1. Except for liability arising out of the ownership, maintenance or use of "covered autos":
 - a. If you are designated in the Declarations as:
 - (1) An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
 - (2) A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.
 - (3) A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.

- (4) An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.
- (5) A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.
- b. Each of the following is also an insured:
 - (1) Your "volunteer workers" only while performing duties related to the conduct of your business, or your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business. However, none of these "employees" or "volunteer workers" are insureds for:
 - (a) "Bodily injury" or "personal and advertising injury":
 - (i) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), to a co-"employee" in the course of his or her employment or performing duties related to the conduct of your business or to your other "volunteer workers" while performing duties related to the conduct of your business;
 - (ii) To the spouse, child, parent, brother or sister of that co-"employee" or "volunteer worker" as a consequence of Paragraph (a)(i) above; or
 - (iii) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraph (a)(i) or (ii) above.

- (b) "Property damage" to property:
- (i) Owned, occupied or used by;
 - (ii) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by;
- you, any of your "employees", "volunteer workers", any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).
- (2) Any person (other than your "employee" or "volunteer worker"), or any organization while acting as your real estate manager.
 - (3) Any person or organization having proper temporary custody of your property if you die, but only:
 - (a) With respect to liability arising out of the maintenance or use of that property; and
 - (b) Until your legal representative has been appointed.
 - (4) Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this Coverage Part.
- c. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:
- (1) Coverage under this provision is afforded only until the 90th day after you acquire or form the organization or the end of the policy period, whichever is earlier;
 - (2) Coverage A does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and
 - (3) Coverage B does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.
2. Only with respect to liability arising out of the ownership, maintenance or use of "covered autos":
 - a. You are an insured.
 - b. Anyone else while using with your permission a "covered auto" you own, hire or borrow is also an insured except:
 - (1) The owner or anyone else from whom you hire or borrow a "covered auto". This exception does not apply if the "covered auto" is a trailer or semitrailer connected to a "covered auto" you own.
 - (2) Your "employee" if the "covered auto" is owned by that "employee" or a member of his or her household.
 - (3) Someone using a "covered auto" while he or she is working in a business of selling, servicing, repairing, parking or storing "autos" unless that business is yours.
 - (4) Anyone other than your "employees", partners (if you are a partnership), members (if you are a limited liability company), or a lessee or borrower or any of their "employees", while moving property to or from a "covered auto".
 - (5) A partner (if you are a partnership), or a member (if you are a limited liability company) for a "covered auto" owned by him or her or a member of his or her household.
 - (6) "Employees" with respect to "bodily injury" to:
 - (a) Any fellow "employee" of the insured arising out of and in the course of the fellow "employee's" employment or while performing duties related to the conduct of your business; or
 - (b) The spouse, child, parent, brother or sister of that fellow "employee" as a consequence of Paragraph (a) above.
 - c. Anyone liable for the conduct of an insured described above is also an insured, but only to the extent of that liability.
3. Any additional insured under any policy of "underlying insurance" will automatically be an insured under this insurance.
- Subject to Section III – Limits Of Insurance, if coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:
- a. Required by the contract or agreement, less any amounts payable by any "underlying insurance"; or
 - b. Available under the applicable Limits of Insurance shown in the Declarations;
- whichever is less.

Additional insured coverage provided by this insurance will not be broader than coverage provided by the "underlying insurance".

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

SECTION III - LIMITS OF INSURANCE

1. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:
 - a. Insureds;
 - b. Claims made, "suits" brought, or number of vehicles involved; or
 - c. Persons or organizations making claims or bringing "suits".
2. The Aggregate Limit is the most we will pay for the sum of all "ultimate net loss" under:
 - a. Coverage A, except "ultimate net loss" because of "bodily injury" or "property damage" arising out of the ownership, maintenance or use of a "covered auto"; and
 - b. Coverage B.
3. Subject to Paragraph 2. above, the Each Occurrence Limit is the most we will pay for the sum of all "ultimate net loss" under Coverage A because of all "bodily injury" and "property damage" arising out of any one "occurrence".
4. Subject to Paragraph 2. above, the Personal And Advertising Injury Limit is the most we will pay under Coverage B for the sum of all "ultimate net loss" because of all "personal and advertising injury" sustained by any one person or organization.
5. If there is "underlying insurance" with a policy period that is nonconcurrent with the policy period of this Commercial Liability Umbrella Coverage Part, the "retained limit(s)" will only be reduced or exhausted by payments for:
 - a. "Bodily injury" or "property damage" which occurs during the policy period of this Coverage Part; or
 - b. "Personal and advertising injury" for offenses that are committed during the policy period of this Coverage Part.

However, if any "underlying insurance" is written on a claims-made basis, the "retained limit(s)" will only be reduced or exhausted by claims for that insurance that are made during the policy period, or any Extended Reporting Period, of this Coverage Part.

The Aggregate Limit, as described in Paragraph 2. above, applies separately to each consecutive annual period and to any remaining period of less

than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

SECTION IV - CONDITIONS

1. Appeals

If the "underlying insurer" or insured elects not to appeal a judgment in excess of the "retained limit", we may do so at our own expense. We will also pay for taxable court costs, pre- and postjudgment interest and disbursements associated with such appeal. In no event will this provision increase our liability beyond the applicable Limits of Insurance described in Section III -- Limits Of Insurance.

2. Bankruptcy

a. Bankruptcy Of Insured

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Coverage Part.

b. Bankruptcy Of Underlying Insurer

Bankruptcy or insolvency of the "underlying insurer" will not relieve us of our obligations under this Coverage Part.

However, this insurance will not replace the "underlying insurance" in the event of bankruptcy or insolvency of the "underlying insurer". This insurance will apply as if the "underlying insurance" were in full effect.

3. Duties In The Event Of Occurrence, Offense, Claim Or Suit

- a. You must see to it that we are notified as soon as practicable of an "occurrence" or an offense, regardless of the amount, which may result in a claim. To the extent possible, notice should include:

- (1) How, when and where the "occurrence" or offense took place;
- (2) The names and addresses of any injured persons and witnesses; and
- (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.

- b. If a claim is made or "suit" is brought against any insured, you must:

- (1) Immediately record the specifics of the claim or "suit" and the date received; and
- (2) Notify us as soon as practicable.

You must see to it that we receive written notice of the claim or "suit" as soon as practicable.

c. You and any other involved insured must:

- (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
- (2) Authorize us to obtain records and other information;
- (3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and
- (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this insurance may also apply.

d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

4. Legal Action Against Us

No person or organization has a right under this Coverage Part:

- a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or
- b. To sue us on this Coverage Part unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of this Coverage Part or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

5. Other Insurance

- a. This insurance is excess over, and shall not contribute with any of the other insurance, whether primary, excess, contingent or on any other basis. This condition will not apply to insurance specifically written as excess over this Coverage Part.

When this insurance is excess, we will have no duty under Coverages A or B to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

- b. When this insurance is excess over other insurance, we will pay only our share of the "ultimate net loss" that exceeds the sum of:

(1) The total amount that all such other insurance would pay for the loss in the absence of the insurance provided under this Coverage Part; and

(2) The total of all deductible and self-insured amounts under all that other insurance.

6. Premium Audit

- a. We will compute all premiums for this Coverage Part in accordance with our rules and rates.
- b. Premium shown in this Coverage Part as advance premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period and send notice to the first Named Insured. The due date for audit and retrospective premiums is the date shown as the due date on the bill. If the sum of the advance and audit premiums paid for the policy period is greater than the earned premium, we will return the excess to the first Named Insured.
- c. The first Named Insured must keep records of the information we need for premium computation, and send us copies at such times as we may request.

7. Representations Or Fraud

By accepting this policy, you agree:

- a. The statements in the Declarations are accurate and complete;
- b. Those statements are based upon representations you made to us;
- c. We have issued this policy in reliance upon your representations; and
- d. This policy is void in any case of fraud by you as it relates to this policy or any claim under this policy.

8. Separation Of Insureds

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part to the first Named Insured, this insurance applies:

- a. As if each Named Insured were the only Named Insured; and
- b. Separately to each insured against whom claim is made or "suit" is brought.

9. Transfer Of Rights Of Recovery Against Others To Us

If the insured has rights to recover all or part of any payment we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.

10. When We Do Not Renew

If we decide not to renew this Coverage Part, we will mail or deliver to the first Named Insured shown in the Declarations written notice of the nonrenewal not less than 30 days before the expiration date.

If notice is mailed, proof of mailing will be sufficient proof of notice.

11. Loss Payable

Liability under this Coverage Part does not apply to a given claim unless and until:

- a. The insured or insured's "underlying insurer" has become obligated to pay the "retained limit"; and
- b. The obligation of the insured to pay the "ultimate net loss" in excess of the "retained limit" has been determined by a final settlement or judgment or written agreement among the insured, claimant and us.

12. Transfer Of Defense

When the underlying limits of insurance have been used up in the payment of judgments or settlements, the duty to defend will be transferred to us. We will cooperate in the transfer of control to us of any outstanding claims or "suits" seeking damages to which this insurance applies which would have been covered by the "underlying insurance" had the applicable limit not been used up.

13. Maintenance Of/Changes To Underlying Insurance

Any "underlying insurance" must be maintained in full effect without reduction of coverage or limits except for the reduction of the aggregate limit in accordance with the provisions of such "underlying insurance" that results from payment of claims, settlement or judgments to which this insurance applies.

Such exhaustion or reduction is not a failure to maintain "underlying insurance". Failure to maintain "underlying insurance" will not invalidate insurance provided under this Coverage Part, but insurance provided under this Coverage Part will apply as if the "underlying insurance" were in full effect.

If there is an increase in the scope of coverage of any "underlying insurance" during the term of this policy, our liability will be no more than it would have been if there had been no such increase.

You must notify us in writing, as soon as practicable, if any "underlying insurance" is cancelled, not renewed, replaced or otherwise terminated, or if the limits or scope of coverage of any "underlying insurance" is changed.

14. Expanded Coverage Territory

- a. If a "suit" is brought in a part of the "coverage territory" that is outside the United States of America (including its territories and possessions), Puerto Rico or Canada, and we are prevented by law, or otherwise, from defending the insured, the insured will initiate a defense of the "suit". We will reimburse the insured, under Supplementary Payments, for any reasonable and necessary expenses incurred for the defense of a "suit" seeking damages to which this insurance applies, that we would have paid had we been able to exercise our right and duty to defend.

If the insured becomes legally obligated to pay sums because of damages to which this insurance applies in a part of the "coverage territory" that is outside the United States of America (including its territories and possessions), Puerto Rico or Canada, and we are prevented by law, or otherwise, from paying such sums on the insured's behalf, we will reimburse the insured for such sums.

- b. All payments or reimbursements we make for damages because of judgments or settlements will be made in U.S. currency at the prevailing exchange rate at the time the insured became legally obligated to pay such sums. All payments or reimbursements we make for expenses under Supplementary Payments will be made in U.S. currency at the prevailing exchange rate at the time the expenses were incurred.
- c. Any disputes between you and us as to whether there is coverage under this policy must be filed in the courts of the United States of America (including its territories and possessions), Canada or Puerto Rico.
- d. The insured must fully maintain any coverage required by law, regulation or other governmental authority during the policy period, except for reduction of the aggregate limits due to payments of claims, judgments or settlements.

Failure to maintain such coverage required by law, regulation or other governmental authority will not invalidate this insurance. However, this insurance will apply as if the required coverage by law, regulation or other governmental authority was in full effect.

SECTION V – DEFINITIONS

1. "Advertisement" means a notice that is broadcast or published to the general public or

specific market segments about your goods, products or services for the purpose of attracting customers or supporters. For the purposes of this definition:

- a. Notices that are published include material placed on the Internet or on similar electronic means of communication; and
 - b. Regarding web sites, only that part of a web site that is about your goods, products or services for the purposes of attracting customers or supporters is considered an advertisement.
2. "Auto" means:
- a. A land motor vehicle, trailer or semitrailer designed for travel on public roads, including any attached machinery or equipment; or
 - b. Any other land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged.
- However, "auto" does not include "mobile equipment".
3. "Bodily injury" means bodily injury, disability, sickness or disease sustained by a person, including death resulting from any of these at any time. "Bodily injury" includes mental anguish or other mental injury resulting from "bodily injury".
4. "Coverage territory" means anywhere in the world with the exception of any country or jurisdiction which is subject to trade or other economic sanction or embargo by the United States of America.
5. "Covered auto" means only those "autos" to which "underlying insurance" applies.
6. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".
7. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, bylaws or any other similar governing document.
8. "Impaired property" means tangible property, other than "your product" or "your work", that cannot be used or is less useful because:
- a. It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or
 - b. You have failed to fulfill the terms of a contract or agreement;
- if such property can be restored to use by the repair, replacement, adjustment or removal of "your product" or "your work", or your fulfilling the terms of the contract or agreement.

9. "Insured contract" means:

- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";
- b. A sidetrack agreement;
- c. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
- d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
- e. An elevator maintenance agreement;
- f. That part of any contract or agreement entered into, as part of your business, pertaining to the rental or lease, by you or any of your "employees", of any "auto". However, such contract or agreement shall not be considered an "insured contract" to the extent that it obligates you or any of your "employees" to pay for "property damage" to any "auto" rented or leased by you or any of your "employees".
- g. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraphs f. and g. do not include that part of any contract or agreement:

- (1) That indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass or crossing;
- (2) That pertains to the loan, lease or rental of an "auto" to you or any of your "employees", if the "auto" is loaned, leased or rented with a driver; or
- (3) That holds a person or organization engaged in the business of transporting property by "auto" for hire harmless for your use of a "covered auto" over a

route or territory that person or organization is authorized to serve by public authority.

10. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".
11. "Loading or unloading" means the handling of property:
 - a. After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or "auto";
 - b. While it is in or on an aircraft, watercraft or "auto"; or
 - c. While it is being moved from an aircraft, watercraft or "auto" to the place where it is finally delivered;

but "loading or unloading" does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft or "auto".
12. "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:
 - a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
 - b. Vehicles maintained for use solely on or next to premises you own or rent;
 - c. Vehicles that travel on crawler treads;
 - d. Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
 - (1) Power cranes, shovels, loaders, diggers or drills; or
 - (2) Road construction or resurfacing equipment such as graders, scrapers or rollers;
 - e. Vehicles not described in Paragraph a., b., c. or d. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
 - (1) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
 - (2) Cherry pickers and similar devices used to raise or lower workers;
 - f. Vehicles not described in Paragraph a., b., c. or d. above maintained primarily for

purposes other than the transportation of persons or cargo.

However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":

- (1) Equipment designed primarily for:
 - (a) Snow removal;
 - (b) Road maintenance, but not construction or resurfacing; or
 - (c) Street cleaning;
- (2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
- (3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

However, "mobile equipment" does not include land vehicles that are subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged. Land vehicles subject to a compulsory or financial responsibility law or other motor vehicle insurance law are considered "autos".

13. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.
14. "Personal and advertising injury" means injury, including consequential "bodily injury", arising out of one or more of the following offenses:
 - a. False arrest, detention or imprisonment;
 - b. Malicious prosecution;
 - c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;
 - d. Oral or written publication, in any manner, of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
 - e. Oral or written publication, in any manner, of material that violates a person's right of privacy;
 - f. The use of another's advertising idea in your "advertisement"; or
 - g. Infringing upon another's copyright, trade dress or slogan in your "advertisement".

15. "Pollutants" mean any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

16. "Pollution cost or expense" means any loss, cost or expense arising out of any:

- a. Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
- b. Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

17. "Products-completed operations hazard":

- a. Includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:

(1) Products that are still in your physical possession; or

(2) Work that has not yet been completed or abandoned. However, "your work" will be deemed completed at the earliest of the following times:

(a) When all of the work called for in your contract has been completed.

(b) When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site.

(c) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

- b. Does not include "bodily injury" or "property damage" arising out of:

(1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the "loading or unloading" of that vehicle by any insured; or

(2) The existence of tools, uninstalled equipment or abandoned or unused materials.

18. "Property damage" means:

- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
- b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it.

With respect to the ownership, maintenance or use of "covered autos", property damage also includes "pollution cost or expense", but only to the extent that coverage exists under the "underlying insurance" or would have existed but for the exhaustion of the underlying limits.

For the purposes of this insurance, with respect to other than the ownership, maintenance or use of "covered autos", electronic data is not tangible property.

As used in this definition, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software (including systems and applications software), hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

19. "Retained limit" means the available limits of "underlying insurance" scheduled in the Declarations or the "self-insured retention", whichever applies.

20. "Self-insured retention" means the dollar amount listed in the Declarations that will be paid by the insured before this insurance becomes applicable only with respect to "occurrences" or offenses not covered by the "underlying insurance". The "self-insured retention" does not apply to "occurrences" or offenses which would have been covered by "underlying insurance" but for the exhaustion of applicable limits.

21. "Suit" means a civil proceeding in which damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies are alleged. "Suit" includes:

- a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or

- b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent or the "underlying insurer's" consent.
22. "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.
23. "Ultimate net loss" means the total sum, after reduction for recoveries or salvages collectible, that the insured becomes legally obligated to pay as damages by reason of settlement or judgments or any arbitration or other alternate dispute method entered into with our consent or the "underlying insurer's" consent.
24. "Underlying insurance" means any policies of insurance listed in the Declarations under the Schedule of "underlying insurance".
25. "Underlying insurer" means any insurer who provides any policy of insurance listed in the Schedule of "underlying insurance".
26. "Volunteer worker" means a person who is not your "employee", and who donates his or her work and acts at the direction of and within the scope of duties determined by you, and is not paid a fee, salary or other compensation by you or anyone else for their work performed for you.
27. "Your product":
- a. Means:
- (1) Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by;
- (a) You;
- (b) Others trading under your name; or
- (c) A person or organization whose business or assets you have acquired; and
- (2) Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.
- b. Includes:
- (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your product"; and
- (2) The providing of or failure to provide warnings or instructions.
- c. Does not include vending machines or other property rented to or located for the use of others but not sold.
28. "Your work":
- a. Means:
- (1) Work or operations performed by you or on your behalf; and
- (2) Materials, parts or equipment furnished in connection with such work or operations.
- b. Includes:
- (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your work"; and
- (2) The providing of or failure to provide warnings or instructions.

COMMERCIAL LIABILITY UMBRELLA
CU 02 07 04 13

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

MONTANA CHANGES – CANCELLATION AND NONRENEWAL

This endorsement modifies insurance provided under the following:

COMMERCIAL LIABILITY UMBRELLA COVERAGE PART

- I. When a policy of commercial automobile insurance is "underlying insurance" under this Coverage Part, the Cancellation Common Policy Condition does not apply. The following Condition applies instead:

Ending This Policy

A. Cancellation

1. The first Named Insured shown in the Declarations may cancel the policy by mailing or delivering to us advance written notice of cancellation.
2. Midterm Cancellation
 - a. When this policy is in effect less than 60 days and is not a renewal or continuation policy, we may cancel for any reason. If we cancel for nonpayment of premium, we will mail at least 10 days written notice to the first Named Insured. If we cancel for any other reason, we will mail at least 45 days written notice to the first Named Insured.
 - b. When this policy is in effect 60 days or more or is a renewal or continuation policy, we may cancel only for one or more of the following reasons:
 - (1) Nonpayment of premium;
 - (2) If you are an individual and your driver's license or motor vehicle registration or that of a driver who lives with you and customarily uses the "covered auto" has been suspended or revoked during the policy period, or if the policy is a renewal, during its policy period or the 180 days immediately preceding its effective date;

If we cancel for nonpayment of premium, we will mail at least 10 days written notice, stating the reason for cancellation, to the first Named Insured. If we cancel for any other reason, we will mail at least 45 days written notice to the first Named Insured.

In this case, our notice will state that upon written request of the first Named Insured, mailed or delivered to us not less than 15 days prior to the effective date of cancellation, we will specify the reason for cancellation.

3. Anniversary Cancellation

If this policy has been written for a period of more than a year or without a fixed expiration date, we may cancel at the anniversary of its original effective date for any reason. If we cancel, we will mail you at least 45 days written notice.

4. Notice of cancellation will state the effective date of cancellation. The policy period will end on that date.

5. If this policy is canceled, we will send the first Named Insured any premium refund due. If we cancel, the refund will be pro rata. If you cancel, the refund may be less than pro rata. The cancellation will be effective even if we have not made or offered a refund.

However, when a financed insurance policy is canceled, we will send any refund due to the premium finance company on a pro rata basis.

B. Mailing Of Notices

We will mail or deliver our notice of cancellation or nonrenewal to the first Named Insured's last mailing address known to us. If notice is mailed, proof of mailing will be sufficient proof of notice.

C. Condition 10. When We Do Not Renew of Section IV – Conditions is replaced by the following:

1. If we decide not to renew or continue this policy, we will mail to the first Named Insured and agent, if any, notice at least 45 days before the end of the policy period. Our notice will state that upon written request of the first Named Insured, mailed or delivered to us not later than 1 month following the termination date of the policy, we will notify the first Named Insured in writing, within 15 days of the request of the reason or reasons for nonrenewal.

If we offer to renew or continue and you do not accept, this policy will terminate at the end of the current policy period. Failure to apply the required renewal or continuation premium when due shall mean that you have not accepted our offer.

2. If we fail to mail or deliver proper notice of nonrenewal and you obtain other insurance this policy will end on the effective date of that insurance.

II. When Section 1. of this endorsement does not apply, the following provisions apply:

A. Paragraph 2. of the Cancellation Common Policy Condition is replaced by the following:

Midterm Cancellation

We may cancel this policy based on the provisions below, by mailing or delivering written notice to the first Named Insured at least 10 days before the effective date of cancellation:

1. If this policy has been in effect for less than 60 days, except as provided in Paragraph A.3., we may cancel for any reason.

2. If this policy has been in effect for 60 days or more, we may cancel this policy prior to the expiration of the agreed term or prior to one year from the effective date of the policy or renewal, whichever is less, only for one or more of the following reasons:

- a. Failure to pay a premium when due;
- b. Material misrepresentation;
- c. Substantial change in the risk assumed, except to the extent that we should reasonably have foreseen the change or contemplated the risk in writing the contract;
- d. Substantial breaches of contractual duties, conditions or warranties;
- e. Determination by the Commissioner of Insurance that continuation of the policy would place us in violation of the Montana Insurance Code;
- f. Financial impairment of us; or
- g. Such other reasons that are approved by the Commissioner of Insurance.

3. If this policy has been issued for a term longer than one year, and if either the premium is prepaid or an agreed term is guaranteed for additional premium consideration, we may cancel this policy only for one or more of the reasons stated in Paragraph A.2.

Anniversary Cancellation

We may cancel any policy with a term of more than one year by mailing or delivering to the first Named Insured written notice of cancellation at least 45 days before the anniversary date of the policy. Such cancellation will be effective on the policy's anniversary date.

B. Paragraph 5. of the Cancellation Common Policy Condition is replaced by the following:

5. If this policy is cancelled, we will send the first Named Insured any premium refund due. If we cancel, the refund will be pro rata. If the first Named Insured cancels, the refund may be less than pro rata. The cancellation will be effective even if we have not made or offered a refund. However, when a financed insurance policy is cancelled, we will send any refund due to the premium finance company on a pro rata basis.

C. Paragraph 10. When We Do Not Renew of Section IV - Conditions is replaced by the following:

1. If we elect not to renew this Coverage Part, we will mail or deliver to the first Named Insured shown in the Declarations and agent, if any, a notice of intention not to renew at least 45 days before the agreed expiration date.

2. We need not mail or deliver this notice if:

- a. You have purchased insurance else where;
- b. You have accepted replacement coverage;
- c. You have requested or agreed to nonrenewal; or
- d. This policy is expressly designated as nonrenewable.



COMMERCIAL LIABILITY UMBRELLA
CU 21 86 05 14

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**EXCLUSION – ACCESS OR DISCLOSURE OF
CONFIDENTIAL OR PERSONAL INFORMATION AND
DATA-RELATED LIABILITY – WITH
LIMITED BODILY INJURY EXCEPTION**

This endorsement modifies insurance provided under the following:

COMMERCIAL LIABILITY UMBRELLA COVERAGE PART

- A. Exclusion 2.t. of Section I – Coverage A – Bodily Injury And Property Damage Liability is replaced by the following:

2. Exclusions

This insurance does not apply to:

- t. Access Or Disclosure Of Confidential Or Personal Information And Data-related Liability

Damages arising out of:

- (1) Any access to or disclosure of any person's or organization's confidential or personal information, including patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of nonpublic information; or
- (2) The loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate electronic data.

This exclusion applies even if damages are claimed for notification costs, credit monitoring expenses, forensic expenses, public relations expenses or any other loss, cost or expense incurred by you or others arising out of that which is described in Paragraph (1) or (2) above.

However, unless Paragraph (1) above applies, this exclusion does not apply to damages because of "bodily injury".

As used in this exclusion, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

- B. The following is added to Paragraph 2. Exclusions of Section I – Coverage B – Personal And Advertising Injury Liability:

2. Exclusions

This insurance does not apply to:

Access Or Disclosure Of Confidential Or Personal Information

"Personal and advertising injury" arising out of any access to or disclosure of any person's or organization's confidential or personal information, including patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of nonpublic information.

This exclusion applies even if damages are claimed for notification costs, credit monitoring expenses, forensic expenses, public relations expenses or any other loss, cost or expense incurred by you or others arising out of any access to or disclosure of any person's or organization's confidential or personal information.

POLICY NUMBER: UMB 1008379 04

COMMERCIAL LIABILITY UMBRELLA
CU 24 03 09 00

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**WAIVER OF TRANSFER OF RIGHTS OF RECOVERY
AGAINST OTHERS TO US**

This endorsement modifies insurance provided under the following:

COMMERCIAL LIABILITY UMBRELLA COVERAGE PART

SCHEDULE

Name Of Person Or Organization:
APPLIES TO ALL PREMISES AS
SCHEDULED ON THE POLICY

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

The Transfer Of Rights Of Recovery Against Others To Us Condition under Section IV - Conditions is amended by the addition of the following:

We waive any right of recovery we may have against the person or organization shown in the Schedule above because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a contract with that person or organization and included in the "products-completed operations hazard". This waiver applies only to the person or organization shown in the Schedule above.

000020 113/133

DST 000/20190

COMMERCIAL LIABILITY UMBRELLA
CU 24 30 04 13

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.
AMENDMENT OF INSURED CONTRACT DEFINITION

This endorsement modifies insurance provided under the following:

COMMERCIAL LIABILITY UMBRELLA COVERAGE PART

Paragraph 9. of the Definitions section is replaced by the following:

9. "Insured contract" means:

- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";
- b. A sidetrack agreement;
- c. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
- d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
- e. An elevator maintenance agreement;
- f. That part of any contract or agreement entered into, as part of your business, pertaining to the rental or lease, by you or any of your "employees", of any "auto". However, such contract or agreement shall not be considered an "insured contract" to the extent that it obligates you or any of your "employees" to pay for "property damage" to any "auto" rented or leased by you or any of your "employees";

- g. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization, provided the "bodily injury" or "property damage" is caused, in whole or in part, by you or by those acting on your behalf. However, such part of a contract or agreement shall only be considered an "insured contract" to the extent your assumption of the tort liability is permitted by law. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraphs f. and g. do not include that part of any contract or agreement:

- (1) That indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass or crossing;
- (2) That pertains to the loan, lease or rental of an "auto" to you or any of your "employees", if the "auto" is loaned, leased or rented with a driver; or
- (3) That holds a person or organization engaged in the business of transporting property by "auto" for hire harmless for your use of a "covered auto" over a route or territory that person or organization is authorized to serve by public authority.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**AMENDMENT OF OTHER INSURANCE CONDITIONS ENDORSEMENT
NON-CONTRIBUTORY**

This endorsement modifies insurance provided under the following:

COMMERCIAL LIABILITY UMBRELLA COVERAGE PART

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

Under **SECTION IV – CONDITIONS, 5. Other Insurance** is deleted and replaced by the following:

5. Other Insurance

a. This insurance is excess over, and shall not contribute with any of the other insurance, whether primary, excess, contingent or on any other basis. This condition will not apply to insurance:

(1) specifically written as excess over this Coverage Part; or

(2) purchased by an additional insured as part of its own insurance program if:

(a) the additional insured qualifies as an additional insured on the "underlying insurance"; and

(b) the "underlying insurance" applies on a non-contributory basis.

When this insurance is excess, we will have no duty under Coverages A or B to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

b. When this insurance is excess over other insurance, we will pay only our share of the "ultimate net loss" that exceeds the sum of:

(1) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and

(2) The total of all deductible and self-insured amounts under all that other insurance.

COMMERCIAL LIABILITY UMBRELLA
WN CU 114 07 15

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.



WHO IS AN INSURED AMENDED

This endorsement modifies insurance provided under the following:

COMMERCIAL LIABILITY UMBRELLA COVERAGE PART

With respect to **SECTION II – WHO IS AN INSURED**, Paragraph 3. is replaced by the following:

3. Any additional insured under any policy of "underlying insurance" will automatically be an insured under this insurance.

Subject to **Section III – Limits Of Insurance**, if coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is:

- a. The minimum amount of insurance required by the contract or agreement, less any amounts payable by any "underlying insurance; or
- b. The amount of insurance available under the applicable Limits of insurance shown in the Declarations;

whichever is less.

Additional insured coverage provided by this insurance will not be broader than coverage provided by the "underlying insurance".

000020 16/133

DXST 06073810

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Southern Minnesota Beet Sugar
Cooperative,

Civil File No. 17-cv-5552

Plaintiff,

COMPLAINT

vs.

Agri Systems d/b/a ASI Industrial, Inc.,

Defendant.

Plaintiff Southern Minnesota Beet Sugar Cooperative (“SMBSC”), for its
Complaint against Defendant Agri Systems d/b/a ASI Industrial (“ASI”), alleges and
states as follows:

PARTIES

1. SMBSC is a cooperative organized under the laws of the State of
Minnesota, with its principal place of business at 83550 County Road 21 in Renville,
Minnesota. As it relates to this case, SMBSC is in the business of processing sugar beets
into sugar and selling that sugar to end users.

2. ASI is a Montana corporation organized under the law of the State of
Montana, with its principal place of business at 1300 Minnesota Avenue in Billings,
Montana. As it relates to this case, ASI is in the business of providing storage facilities
including the design, engineering, and construction of such facilities.



JURISDICTION AND VENUE

3. Jurisdiction in this Court arises under 28 U.S.C. § 1332(a) because the parties are citizens of different states and because the amount in controversy excludes \$75,000 exclusive of interest and costs.

4. Venue lies in this district in that a substantial part of the events and omissions giving rise to the claims herein occurred in the District of Minnesota, because the goods and/or services provided by ASI were provided by ASI in the District of Minnesota, and because ASI has consented to venue in the District of Minnesota.

5. This Court has personal jurisdiction over ASI because a substantial part of the events and omissions giving rise to the claims herein occurred in Minnesota, because the goods and/or services provided by ASI were provided by ASI in Minnesota, because ASI committed acts causing injury in Minnesota, and because ASI has consented to personal jurisdiction in the state and federal courts of Minnesota.

FACTUAL BACKGROUND

6. This action arises out of the failures of ASI to provide sugar storage to SMBSC as contracted. ASI's failures have been repeat, and the storage facilities ASI has provided were and are defective and even hazardous.

7. In April 2014, SMBSC contracted with ASI under the terms of a Design-Build Agreement ("Agreement") for provision of six sugar storage silos. The silos were due to be completed in 12 months (with adjustments for change orders), for a contract price in excess of \$13 million.

8. Under the terms of the Agreement, ASI had both design and engineering, and construction obligations.

9. ASI knew that the sugar silos were being provided for the purpose of filling them with sugar, storing that sugar, and emptying that sugar from the silos, all at SMBSC's sugar-processing facilities.

10. The ASI sugar silos were designed to be filled with sugar near the top of the silo structure, and emptied at the bottom of the structure through access in the floor of the structure, as is common in the industry.

11. The sugar silos, once full or partially full, cannot be emptied merely by opening the access in the floor. Opening the access in the floor alone would result in some amount of sugar "pouring" out of the silo, but most of the sugar in the silo would remain in the silo compacted against the walls of the silo.

12. As a result, sugar silos (including ASI's sugar silos) include a device known as a "reclaimer." A reclaimer is a mechanical device suspended from the top of the silo meant to be placed in the top of the stored sugar and mechanically "stir" the top of the stored sugar to draw sugar away from the outer portions of the silo and into the center where it can be emptied.

13. The upper portion of the reclaimer includes a gantry or platform on which one or more operators can stand and work, as well as the drive system for the reclaimer and a rail and trolley system from which the reclaimer is suspended in the silo. The lower portion of the reclaimer includes cabling from which an auger system hangs, and is

designed to rotate around the silo and draw sugar toward the center of the silo as the upper portion turns.

14. Without a functioning reclaimer, a sugar silo (including ASI's sugar silos) cannot be used for storage as intended, because the sugar cannot be removed from the silo.

15. ASI was responsible for designing, engineering and constructing the silos, including the reclaimers, "in accordance with . . . the professional standards applicable to the Work, buildings or work of complexity, quality and scope comparable to the Work."

16. ASI also warranted that the "Work will be performed in a good and workmanlike manner, be free of defects in workmanship and will be performed in compliance with the Contract Documents and Legal Requirements."

17. The Agreement expressly provides that except as otherwise provided in the Agreement, "no remedy under the terms of this Agreement is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedies, existing now or hereafter, at law, in equity or by statute." The Agreement also expressly provides that remedies relating to correction of work after completion do not establish a period of limitation with respect to ASI's obligations, including, by way of express illustration, liabilities of ASI with regard to design of the Work.

18. SMBSC relied on ASI's expertise, including its promises to perform the supply the silos in accordance with professional standards and free of defects.

19. ASI has not complied with its obligations under the Agreement, or at law and equity.

20. ASI has not provided silos, including the reclaimers, designed in accordance with professional standards.

21. ASI has not provided silos, including the reclaimers, that are free of defects.

22. ASI has not provided silos, including the reclaimers, that are in compliance with the Contract Documents and Legal Requirements.

23. On December 30, 2015, barely a few cycles into the filling and emptying of any of the silos, one of the reclaimers on the ASI-designed and -built silos catastrophically failed. Parts of the upper portion of the reclaimer gave way, sending the reclaimer crashing to the bottom of the silo and into stored sugar.

24. In December 2015, there were no safety mechanisms on the upper portion of the reclaimers to prevent the entire reclaimer, including the gantry platform, and the trolley system, from crashing from the height of the silo into the sugar – sending whatever and whoever was on the upper portion of the reclaimer, into the sugar below, without notice or warning.

25. ASI identified a substantial flaw in the design of the upper portion of the reclaimer as the cause of the failure.

26. All five of the remaining reclaimers were designed and built identically to the failed reclaimer, and each was demonstrably in a defective and unsafe condition.

None of the reclaimers could be operated without constant unreasonable and unacceptable risk.

27. In providing silos without safely and reliably functioning reclaimers, ASI failed to perform under the contract, and is in breach.

28. SMBSC incurred substantial damages as a result of ASI's failures, exceeding \$1.7 million.

29. SMBSC tendered the claim for damages to ASI, but ASI has refused to pay.

30. ASI provided an allegedly corrected design for portions of reclaimers in or about January 2016. The allegedly corrected design appeared to reconfigure the trolley system and add substantially more metal to the trolley system to account for the failure point(s) of the December 2015 failure.

31. The new design eventually contained a "fail safe," intended to "catch" the upper portion of the reclaimer on the rail system in the event that the upper portion suffered yet another failure.

32. The new design was fabricated and installed by ASI over the course of several months. The reclaimers were finally operated as redesigned in or about April 2016.

33. Over the course of many more months, ASI and SMBSC personnel met both in person and on the phone regarding the damages SMBSC had incurred as a result of ASI's failed and defective performance. Upon information and belief, ASI submitted SMBSC's claim to its insurance, who thereafter spent still many more months allegedly "investigating" the claim.

34. SMBSC spent substantial time, effort, and expense cooperating with ASI's insurer at ASI's request in an effort to facilitate full and complete payment by ASI (whether from its insurance company or otherwise).

35. In November 2017, ASI, through its insurance adjuster, finally made clear neither ASI nor its insurance had any intention of paying the amounts owed.

36. On or about November 26, 2017, the ASI silos experienced another failure, again in the now-redesigned trolley system of the upper portion of the reclaimer.

37. Not a single silo had been cycled more than 10 times (empty to full to empty) since they had been built and rebuilt, before the new failure.

38. In providing silos without safely and reliably functioning reclaimers, ASI again failed to perform under the contract, and is in breach.

39. On or about December 5, 2017, SMBSC met by phone with ASI to discuss the new failure of the reclaimers. ASI refused to come onsite to review the failed reclaimer, but nonetheless purported to speculate as to the potential causes of the failure.

40. ASI also purported to disclaim responsibility for the additional failure, without coming onsite to review the failure.

41. ASI did, however, purport to redesign yet another alleged design fix for the defective reclaimers. On December 7, 2017, ASI transmitted the drawings for an additional alleged fix to SMBSC, still without having reviewed the actual condition of a single reclaimer or trolley system onsite.

42. ASI's newest proposed fix is, at best, a temporary fix, intended to bolt on metal plates to the already twice-failed design of the trolley system.

43. Neither the first re-design nor the subsequent re-design complies with ASI's obligations under the Agreement.

44. ASI has not provided silos, including the reclaimers, designed in accordance with professional standards.

45. ASI has not provided silos, including the reclaimers, that are free of defects.

46. ASI has not provided silos, including the reclaimers that are in compliance with the Contract Documents and Legal Requirements.

47. In addition to other failings, ASI insists that its current proposed design fix is intended to be a permanent fix, without having done anything to actually inspect the current condition of a single reclaimer (failed or otherwise), or actually determine for itself the cause of the failure.

48. In addition to other failings, as of December 16, 2017, ASI now claims that its design of the reclaimers requires and is subject to inspection and potential refurbishing of the reclaimers every time the silos are emptied. At the pace of factory operations, such a position could require repair and replacement of substantial portions of one or more of the silos almost daily under normal use in the heart of SMSBC's sugar-producing operations.

49. ASI's newly described position, that the silos as designed and built would require near-constant inspection and repair in normal use is not reasonable, is not in accordance with professional standards, and renders the silos unfit for the purpose for which the silos were designed and built.

50. As of the filing of this Complaint, the silos remain in a defective condition.

51. To the extent that the silos can be used at all in their current condition, it is only because of the addition of the fail-safe catch, together with other extraordinary safety precautions well beyond those contemplated and reasonable for the design and intended use of the silos and reclaimers.

52. Upon information and belief, as of the writing of this Complaint, ASI is fabricating – allegedly outside of its contract obligations – additional parts to be installed on the trolley system. The new parts will not satisfy all of ASI's obligations on the contract for the prior or current failures; it remains to be seen whether the installation of additional parts as proposed will work even temporarily.

53. The totality of ASI's failures and positions demonstrate a reckless and gross disregard for both (1) its obligations under the contract, at law, and in equity, and (2) the safe and reliable operation of the silos by SMBSC personnel.

54. SMBSC has and will continue to suffer damages as a result of ASI's failures.

COUNT I
(Breach of Contract – Failure to Perform)

55. The above allegations are each incorporated herein.

56. SMBSC and ASI entered into the Agreement.

57. SMBSC performed all conditions precedent to its right to demand performance by the defendant.

58. ASI failed to perform, and timely perform, its obligations under the Agreement. ASI's actions constitute breach of the Agreement.

59. ASI's breach has caused SMBSC damages, in an amount in excess of \$75,000, exclusive of interest and costs, to be proven at full in trial.

COUNT II
(Breach of Express Warranty)

60. The above allegations are each incorporated herein.

61. ASI warranted that it would design, engineer and construct the silos, including the reclaimers, "in accordance with . . . the professional standards applicable to the Work, buildings or work of complexity, quality and scope comparable to the Work."

62. ASI also warranted that the "Work will be performed in a good and workmanlike manner, be free of defects in workmanship and will be performed in compliance with the Contract Documents and Legal Requirements."

63. ASI breached these warranties by the above actions.

64. ASI's breaches of warranty have caused SMBSC damages, in an amount in excess of \$75,000, exclusive of interest and costs, to be proven at full in trial.

COUNT III
(Breach of Implied Warranty)

65. The above allegations are each incorporated herein.

66. At all relevant times, ASI knew that the particular purpose of the silos being designed and built by ASI was to provide sugar storage for SMBSC not later than 12 months after May 2014.

67. At all relevant times, ASI knew that safe and reliably functioning reclaimers were required for storage of sugar, since the purpose of the reclaimers was to permit and facilitate emptying of the silos of stored sugar.

68. At all relevant times, ASI held itself out as competent to undertake the Work under the Agreement.

69. SMBSC relied on ASI to use its skill and professional expertise to supply silos fit for the particular purpose for which they were intended – to store sugar, including safely and reliably emptying that sugar from the silos with the reclaimers.

70. ASI breached its implied warranties of fitness for a particular purpose, in that ASI failed to design, construct and provide silos fit for the storage of sugar, including reliably emptying the silos of that sugar with safe and reliable reclaimers.

71. ASI's breach has caused SMBSC damages, in an amount in excess of \$75,000, exclusive of interest and costs, to be proven at full in trial.

COUNT IV
(Contract Void As Against SMBSC)

72. The above allegations are each incorporated herein.

73. ASI expressly assured SMBSC in the Agreement that licensed, qualified personnel would perform the engineering obligations of the Agreement.

74. Upon information and belief, some or all of the engineering obligations of the Agreement were not and have not been performed by Minnesota-licensed engineers, contrary to Minnesota law.

75. Under Minnesota law, the Agreement, a contract for provision of engineering services performed without an applicable Minnesota license is illegal, void and unenforceable against SMBSC.

76. SMBSC has suffered damages as a result of ASI's substandard, and upon information and belief unlicensed, engineering, in an amount in excess of \$75,000, exclusive of interest and costs, to be proven at full in trial, and including but not limited to disgorgement of contract amounts.

**COUNT IV
(Professional Negligence)**

77. The above allegations are each incorporated herein.

78. ASI had a professional duty to perform engineering, design and construction services for SMBSC.

79. SMBSC foreseeably relied on ASI's professional services.

80. ASI's performed that engineering and design and/or construction negligently, grossly negligently, and/or recklessly.

81. ASI's conduct caused SMBSC damages, in an amount in excess of \$75,000, exclusive of interest and costs, to be proven at full in trial.

**COUNT V
(Product Defect)**

82. The above allegations are each incorporated herein.

83. ASI provided silos, including the reclaimers, in a defective condition, unreasonably dangerous to SMBSC, its property and its personnel when put to its

intended use, and this defective condition existed when the silos, including the reclaimers, were turned over to SMBSC.

84. ASI had a duty to exercise the degree of care in its design to avoid unreasonable risk of harm to SMBSC, its property and its personnel.

85. ASI failed to exercise the degree of care in its design to avoid unreasonable risk of harm to SMBSC, its property and its personnel.

86. ASI foresaw – and knew, based on the design of the reclaimer with its gantry and its use of the silo at the top of the sugar storage silo – that the trolleys were intended to hold SMSBC personnel and the upper portion of the reclaimer, suspended high above the floor of the silo and above any sugar in the silo. ASI knew or reasonably should have known that any failure of the trolley system designed by ASI would expose SMBSC personnel and property to danger if the metal structure of the reclaimer fell into stored sugar or to the silo floor.

87. The likelihood of harm posed by ASI's original design, and the severity of that harm, vastly outweighed available precautions, including, but not limited to the fail-safe "catch" eventually put in place in the subsequent design.

88. ASI's conduct caused SMBSC damages, in an amount in excess of \$75,000, exclusive of interest and costs, to be proven at full in trial.

WHEREAS, SMSBC requests judgment against ASI in an amount in excess of \$75,000, exclusive of interest and costs, to be proven at full in trial, plus costs, interest and fees, and all such other relief as the Court deems just and proper.

Dated: December 22, 2017

DORSEY & WHITNEY LLP

By /s/ Daniel J. Brown

Daniel J. Brown (#0298992)

brown.daniel@dorsey.com

Lauren O. Roso (#0397306)

roso.lauren@dorsey.com

Suite 1500, 50 South Sixth Street

Minneapolis, MN 55402-1498

Telephone: (612) 340-2600

Facsimile: (612) 340-2868

Attorneys for Southern Minnesota Beet
Sugar Cooperative